(22,766 and 22,767.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

No. 690.

JOHN A. KNOTT, H. R. OGLESBY, AND FRANK A. WIGHTMAN, RAILROAD AND WAREHOUSE COMMISSIONERS, AND ELLIOTT W. MAJOR, ATTORNEY GENERAL OF THE STATE OF MISSOURI, APPELLANTS,

vs.

THE MISSOURI, KANSAS & TEXAS RAILWAY COMPANY.

No. 691.

THE MISSOURI, KANSAS & TEXAS RAILWAY COMPANY, APPELLANT,

vs.

JOHN A. KNOTT, H. R. OGLESBY, AND FRANK A. WIGHTMAN, RAILROAD AND WAREHOUSE COMMISSIONERS, AND ELLIOTT W. MAJOR, ATTORNEY GENERAL OF THE STATE OF MISSOURI.

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI.

INDEX.

	Original.	Print
Citation to railway company	*a*	1
Citation to Knott *et al*	*c*	2
Bill of complaint	2	3
Restraining order	31	27

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., SEPTEMBER 13, 1911.

	Original	Print
Order continuing restraining order	33	29
Appearances	37	32
Writ of subpœna and return	38	32
Order of temporary injunction	39	33
Injunction bond	40	34
Demurrer of Knott, Rice, and Wightman, railroad commissioners	41	34
Demurrer of Herbert S. Hadley, attorney general	44	36
Demurrer of C. C. Kelly	47	37
Demurrer of M. P. Belch	49	39
Waiver of affidavits to demurrers	51	40
Order overruling demurrers	52	40
Joint answer of Knott, Rice, and Wightman, railroad commissioners	53	41
Answer of Herbert S. Hadley, attorney general	70	51
Joint and several answer of C. C Kelly *et al.*	86	62
Replication to answer of Knott *et al.*	105	72
Replication to answer of Herbert S. Hadley, attorney general	106	73
Replication to answer of C. C. Kelly *et al.*	107	74
Decree *pro confesso*	108	75
Answer of Geo. N. West	109	76
Replication to answer of Geo. N. West	114	79
Motion of defendants for reference to master	115	80
Motion of complainants for oral hearing	116	81
Order of reference	119	84
Answer of M. Doherty	121	86
Replication to answer of M. Doherty	126	89
Motion for leave to file amended and supplemental bill	127	90
Restraining order of June 13, 1907	128	91
Restraining order of June 14, 1907	129	91
Notice of motion for leave to amend	131	92
Order granting leave to file amended and supplemental bill	132	93
Amended and supplemental bill	134	94
Writ of subpœna and return	152	106
Order granting leave to file amendment to bill	154	108
Amendment to bill of complaint	155	108
Acknowledgments of service of subpœna	164	114
Joint demurrer of Knott, Wightman, and Oglesby, railroad commissioners	167	116
Demurrer of Herbert S. Hadley, attorney general	172	119
Joint and several demurrer of C. W. McAninch *et al.*	177	123
Joint and several demurrer of John T. Heard *et al.*	179	124
Joint and several demurrer of C. C. Kelly *et al.*	181	125
Demurrer of M. Doherty	183	126
Interlocutory report of master and order thereon	185	128
Order granting leave to amend amendment to bill of complaint	187	129
Order overruling demurrers	188	129
Joint answer of John A. Knott *et al.*	189	130
Answer of Herbert S. Hadley, attorney general	191	131
Replication to answer of Knott *et al.*	199	139
Replication to answer of H. S. Hadley, attorney general	200	140
Order as to hearing	201	141
Affidavit of T. F. Wharton	202	142
Exhibits A to J—Statements	204	143
Notice as to hearing	214	149

	Original	Print
Return of special master	215	150
Orders as to hearing	216	150
Complainants' requests for findings of fact	229	162
Certificate of trial judge	279	198
Order of submission	285	202
Order substituting Elliott W. Major as attorney general in the stead of Herbert S. Hadley	286	203
Order as to statement of expert accountants	288	205
Statement of accountants	289	206
Order as to answers, &c.	294	212
Findings of fact	295	213
Decree	320	235
Motion to modify decree	324	238
Amended motion to modify decree	326	239
Notice as to motion to modify	328	240
Amended decree	329	241
Declinations to join in appeal	334	244
Defendants' assignment of errors	342	250
Defendants' petition for appeal	351	258
Defendants' bond on appeal	352	259
Order granting appeal	355	261
Complainant's assignment of errors	356	262
Complainant's petition for cross-appeal	360	264
Bond on cross-appeal	361	264
Order granting cross-appeal	363	266
Order extending time to file transcript	364	266
Stipulation as to transcript	365	266
Remarks of McPherson, judge, filed June 14, 1907	367	268
Remarks of McPherson, judge, filed June 17, 1907	370	270
Remarks of McPherson, judge, filed June 17, 1907	378	275
Opinion of McPherson, judge, filed March 31, 1908	384	279
Opinion of McPherson, judge, filed March 8, 1909	393	285
Supplemental opinion of McPherson, judge, filed April 17, 1909	422	304
Certificate of clerk	427	307

c In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 2997.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY, Complainant,
vs.
JOHN A. KNOTT, H. R. OGLESBY and FRANK A. WIGHTMAN, Railroad Commissioners, et al., Defendants.

The President of the United States to all the defendants of record in above entitled case:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States at the city of Washington, District of Columbia, within thirty days from the date of this writ, pursuant to an appeal duly allowed by the circuit court of the United States for the western division of the western district of Missouri, on March 6, 1911, as a cross appeal in a case where the Missouri, Kansas & Texas Railway Company is cross appellant and you are the cross appellees, and show cause, if any, why the amended final decree rendered against the said appellant as in the said appeal mentioned should not be granted, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Smith McPherson, Judge of the Circuit Court of the United States for the Western Division of the Western District of Missouri, this March 6, 1911.

SMITH McPHERSON, *Judge.*

Due service of above citation accepted this March 6, 1911.

ELLIOTT W. MAJOR,
Att'y General;
JOHN M. ATKINSON,
Asst. Att'y General;
SANFORD B. LADD,
Solicitors for Appellees and Defendants in said Cause.

d [Endorsed:] No. 2997. M. K. & T. Ry. Co. vs. Jno. A. Knott et al. Citation. Filed March 6. 1911. Adelaide Utter, Clerk.

1 UNITED STATES OF AMERICA, *sct:*

Be it remembered, that heretofore, to-wit, on the 16th day of June, A. D. 1905, there was filed in the office of the Clerk of the Circuit Court of the United States, for the Western Division of the Western District of Missouri, a bill of complaint wherein Missouri, Kansas & Texas Railway Company is complainant and John A. Knott, et al., are defendants.

Said bill of complaint is in words and figures as follows.

2 In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY, Complainant,
vs.
JOHN A. KNOTT, JOSEPH P. RICE, and FRANK A. WIGHTMAN, The Board of Railroad and Warehouse Commissioners of the State of Missouri, a Corporation Organized under the Laws of Missouri; Herbert S. Hadley, Attorney General of the State of Missouri; C. C. Kelly and M. P. Belch, Prosecuting Attorneys of Pettis and Cole Counties, Missouri, Respectively; J F. Parker, Geo. West, and M. Doherty, Defendants.

Bill of Complaint.

To the Honorable the Judges of the Circuit Court of the United States for the Western District of Missouri:

Your orator, the Missouri, Kansas & Texas Railway Company, brings this its bill of complaint against each of the above named defendants, and thereupon avers:

I.

Your orator, the Missouri, Kansas & Texas Railway Company, is a railway corporation organized and existing under the laws of the State of Kansas, and is a citizen and resident thereof, being authorized to do business in the State of Missouri. It is, with its railroad, engaged in State and interstate commerce, owning and operating lines of railway in Missouri and other States. Of the said lines, the following are, and have for a long time been owned and operated by your orator in the State of Missouri:

1. A line of railway extending from St. Louis, Missouri, through St. Louis County, Missouri, to and across the Missouri River
3 near St. Charles, in St. Charles County, Missouri, thence westerly along the north bank of the Missouri River and through the Counties of Warren, Montgomery, Callaway, Boone and Howard, to a point called Franklin Junction, in said last named county; thence southerly through the cities of Boonville, in Cooper County, Sedalia, in Pettis County, Clinton in Henry County, Rockville in Bates County and Nevada in Vernon County, to the Missouri-Kansas State line, a distance of 333.13 miles.

2. A line of railway extending from Hannibal, in Marion County, Missouri, in a southwesterly direction through the Counties of Ralls and Monroe, to Moberly in Randolph County; thence southerly through said last named county, to and through the town of Fayette in Howard County to a point of connection with the first named line at Franklin Junction, a distance of 104.5 miles.

3. A line of railway extending from Kansas City Junction, in Pettis County, Missouri, westerly through said county and Johnson County to Harrisonville in Cass County, and thence westerly to the Missouri-Kansas State line, a distance of 69.16 miles.

4. A branch line of railroad, extending from Walker, in Vernon County, in a southeasterly direction to El Dorado Springs, in Cedar County, a distance of 14 miles.

5. A branch line of railway extending from McBain, in Boone County, Missouri, to Columbia, in said county, a distance of 8.53 miles.

6. A line of railroad extending from Kansas City, Missouri, in Jackson County, through said county to the State line, a distance of 2.21 miles.

7. A line of railroad extending from Joplin, in Jasper County, in a westerly direction through said county to the Missouri-Kansas State line, a distance of 5.65 miles.

8. A line of railroad extending from the town of North Jefferson, in Callaway County, Missouri, to the Missouri River, a distance of 1.15 miles.

Your orator therefore owns and operates 538.33 miles of railroad in the State of Missouri.

4 In addition to the above lines of railway owned and operated by your orator in the State of Missouri, it owns and operates 1153.56 miles of railroad in the State of Kansas and in the Indian and Oklahoma Territories, as follows:

1. A line of railroad extending from the Missouri-Kansas State Line near Ft. Scott, Kansas, thence westerly through the city of Ft. Scott in Bourbon County, Kansas, to Parsons, in Labette County, Kansas; thence to and through the cities of Muskogee and South McAlester, in the Indian Territory, to a point on the Red River near the City of Denison, in the State of Texas, a distance of 327.87 miles.

2. A line of railroad extending from a point on the Missouri-Kansas State line near Louisburg, in Miami County, Kansas, westerly through the County of Miami to the town of Paola, in said county, in the State of Kansas, a distance of 16.84 miles.

3. A line of railroad extending from a point on the Missouri-Kansas State line near Kansas City, Missouri, southerly through the town of Paola to Parsons, in Labette County, Kansas, a distance of 134½ miles.

4. A line of railroad extending from Junction City, in Geary County, Kansas, down the valley of the Neosho River to the City of Parsons, a distance of 159 miles.

5. A line of railroad extending from Moran in Allen County, Kansas, in a westerly direction through the city of Iola, to Piqua, in Woodson County, Kansas, a distance of 21 miles.

6. A line of railroad extending from Parsons, Kansas, in a southwesterly direction to Stevens, Indian Territory, near Coffeyville, in Montgomery County, Kansas, thence to and through the Indian Territory and the Osage Reservation, in Oklahoma Territory, to the city of Oklahoma, in Oklahoma County, Oklahoma Territory, a distance of 207 miles.

7. A line of railroad extending from Fallis Junction, a point on the last above named line in Lincoln County, Oklahoma Territory, to the City of Guthrie, in Logan County, Oklahoma Territory, a distance of 23 miles.

8. A line of railroad extending from Mineral, on the main line first herein described in Labette County, Kansas, in an easterly and southeasterly direction through the cities of Columbus and Galena, in the State of Kansas to the Missouri-Kansas State line near the City of Joplin, in Jasper County, Missouri, a distance of 24.35 miles.

9. A line of railroad extending from Oklahoma City, Oklahoma Territory, in an easterly and southeasterly direction to and through the City of Shawnee, in the Territory of Oklahoma; thence into and through the Seminole, Chickasaw and Choctaw Nations in the Indian Territory, to a point of connection with the line first described at Atoka, Choctaw Nation, Indian Territory, a distance of 133 miles.

10. A line of railroad extending from a point called Osage, in the Osage Reservation, Oklahoma Territory, on the line described in paragraph numbered 6 hereof, in an easterly and southeasterly direction to Wybark, a point of connection with the main line described in paragraph numbered 1, a distance of 79 miles.

11. A line of railroad extending from the Town of McAlester, in the Choctaw Nation, Indian Territory, in an easterly direction to Wilburton, in said Choctaw Nation, a distance of 28 miles.

In addition to the above named line of railway owned and operated by your orator in the States of Missouri and Kansas, and in the Indian and Oklahoma Territories, there are operated in harmony with and as a part of what is known as the Missouri, Kansas & Texas Railway System, 1351.11 miles of lines of railroad lying in the States of Texas and Louisiana, owned and operated by The Missouri, Kansas & Texas Railway Company of Texas, a corporation organized under the laws of the State of Texas and the stock of which Company under a special Act of the Legislature of Texas approved April 16th, 1891, is all held by the trustee in your orator's first mortgage of June 1st, 1890, for the benefit of your orator's first and second mortgage bond holders and stock holders, but no dividends have ever been earned or paid on said stock of The Missouri, Kansas & Texas Railway Company of Texas.

Your orator further avers and shows unto your Honors that in addition to the money secured by your orator from the sale of its common and preferred stock and which was used by your orator in constructing, acquiring, maintaining and operating its lines of railway, described as aforesaid, your orator borrowed large sums of money to aid and assist it in the construction, acquisition and maintenance of said lines of railway, and executed mortgages thereon to secure the payment thereof, as follows:

1. A first mortgage or deed of trust dated June 1st, 1890, to the Central Trust Company of New York, as trustee, to secure an issue of 45,000 bonds of $1,000.00 each and 10,000 bonds of $500 each, with interest at four per cent, payable June 1st, and Dec. 1st, each year.

2. A second mortgage dated June 1st, 1890, to the Mercantile Trust Company of New York as trustee, to secure an issue of 17,000 bonds of $1,000 each and 600 of $500 each with interest at the

rate of four per cent, payable August 1st and February 1st each year.

3. A first mortgage on extensions, dated Nov. 1st, 1894, to the Central Trust Company of New York to secure an issue of 5 per cent bonds at a rate not exceeding $20,000 per mile on extensions as and when constructed or acquired.

4. A first, second, third, fourth, fifth, sixth and seventh supplemental mortgage to the said first mortgage on extensions of November 1st, 1894, and dated respectively July 31st, 1895, Dec. 11th, 1899, April 12th, 1901, April 21st, 1902, May 20th, 1902, April 22d, 1903, and May 4th, 1904, all to the said Central Trust Company of New York as trustee to secure an issue of bonds issued under said first mortgage on extensions dated Nov. 1st, 1894, at the rate of $20,000 per mile.

5. A first mortgage dated April 1st, 1901, to The Farmers' Loan & Trust Company and known as the Railway Company's St. Louis Division First Mortgage to secure an issue of six thousand four per cent bonds of $1,000 each.

6. A first and refunding mortgage dated September 1st, 1904, to the Farmers' Loan & Trust Company to secure an issue of 40,000 four per cent bonds of $1,000 each or the equivalent thereof in pounds sterling, marks or francs.

Your orator further shows that in the acquisition and purchase of certain of its lines of railway it purchased and acquired the same subject to certain mortgages thereon, and assumed and agreed to pay the bonds issued thereunder, as follows:

7 By deed of conveyance your orator purchased its line of railway extending from Franklin Junction, along the North bank of the Missouri River to Texas Junction, from The Missouri, Kansas & Eastern Railway Company, a corporation formerly organized and existing under the laws of the State of Missouri, subject to a first mortgage thereon of the said The Missouri, Kansas & Eastern Railway Company to the Central Trust Company of New York, dated April 1st, 1902, to secure a mortgage indebtedness of $4,000,000.00 and also a second mortgage of the said Missouri, Kansas & Eastern Railway Company dated April 1st, 1892, to secure a mortgage indebtedness of $500,000.00.

By articles of consolidation between your orator and the Kansas City & Pacific Railroad Company a corporation formerly organized and existing under the laws of the State of Kansas, your orator acquired its line of railroad extending from Paola, in Miami County, through Parsons, in Labette County, to Coffeyville, in Montgomery County, Kansas, subject to the first mortgage of the said Kansas City & Pacific Railroad Company to the Central Trust Company of New York dated August 1st, 1890.

By conveyances dated June 30th, 1904, and November 3d, 1904, your orator acquired its line extending from a point in the Indian Territory, near Coffeyville, Kansas, to Oklahoma City, and its line extending from Fallis to Guthrie, subject to the first mortgage of the Missouri, Kansas & Oklahoma Railroad Company, a corporation organized under the laws of Oklahoma, to the Central Trust

Company of New York, of date May 1st, 1902, and to which mortgage your orator was a party, having guaranteed the principal and interest of said bonds of the Missouri, Kansas & Oklahoma Railroad Company.

By deeds of conveyance dated June 30th, 1904, and November 3d, 1904, your orator acquired its line extending from Oklahoma City to Lehigh, Choctaw Nation, Indian Territory, subject to the first mortgage of the Texas & Oklahoma Railroad Company to the Central Trust Company of New York, dated July 15, 1903. Your orator was a party to said mortgage by agreeing to guarantee the principal and interest of the bonds of the said Texas & Oklahoma Railroad Company issued under said mortgage of July 15th, 1903.

The following is a statment of the bonds issued and outstanding under each of the above and foregoing mortgages:

8

First Mortgage of the Missouri, Kansas & Texas Railway Company to the Central Trust Company of New York.....	$40,000,000.00
Second Mortgage of the Missouri, aKnsas & Texas Railway Company to The Farmers' Loan & Trust Company	20,000,000.00
First Mortgage on Extensions and the First, Second, Third, Fourth, Fifth, Sixth and Seventh Supplemental Mortgages thereto of the Missouri, Kansas & Texas Railway Company.....	3,254,000.00
St. Louis Division Refunding Mortgage of the Missouri, Kansas & Texas Railway Company...	1,852,000.00
First Mortgage of The Missouri, Kansas & Eastern Railway Company	4,000,000.00
Second Mortgage of The Missouri, Kansas & Eastern Railway Company	113,000.00
First Mortgage of the Kansas & Pacific Railroad Company	2,500,000.00
First Mortgage of the Missouri, Kansas and Oklahoma Railroad Company	5,468,000.00
First Mortgage of the Texas & Oklahoma Railroad Company	3,247,000.00
First and Refunding Mortgage of the Missouri, Kansas & Texas Railway Company.....	1,484,000.00

Your orator by guaranteeing the bonds of The Missouri, Kansas & Texas Railway Company of Texas, and of the Dallas & Waco Railway Company and the Sherman, Shreveport & Southern Railway Company as authorized by law and which two last named companies have been merged into The Missouri, Kansas & Texas Railway Company of Texas pursuant to law is liable for the payment of the principal and interest of the bonds of said Railway Companies, which have been issued under their mortgages as follows:

Bonds of the Dallas & Waco Railway Company....	$1,340,000.00
Bonds of The Missouri, Kansas & Texas Railway Company of Texas	4,505,000.00
Bonds of the Sherman, Shreveport & Southern Railway Company	1,689,000.00

Your orator is also liable as guarantor for $1,000,000.00 bonds, principal and interest, of the Boonville Railroad Bridge Company, whose bridge is now used by your orator as lessee and forms part of your orator's railroad in the State of Missouri.

Your orator further shows unto your Honors that its assets and liabilities at the end of the fiscal year ending June 30th,
9 1904, are correctly set forth in its general balance sheet as set forth in its report to the defendant the Board of Railroad & Warehouse Commissioners of the State of Missouri for that year, and that such balance stated so as to show the details of the financial condition of your orator at that time is as follows:

Condensed Balance Sheet, June 30, 1904.

Assets.		
Cost of Road and Equipment		$169,715,865 40
New Equipment		4,315,896 21
Additions to Terminals		313,000 00
Real Estate purchased		41,088 51
Current Assets.		
Cash on hand and in transit	$1,297,753 11	
Due from Agents, Individuals and Companies	401,557 51	
Material and Supplies	1,407,118 60	
Bonds and Stocks owned by the Company (market value)	1,134,264 30	
		4,240,693 52
		$178,626,543 64

Liabilities.		
Capital Stock Missouri & Texas Ry. Co., Common		$63,300,300 00
" " " " Preferred		13,000,000 00
" " " " of Texas		2,942,900 00
" Boonville Railroad Bridge Co		1,000,000 00
1st Mortgage Bonds, Missouri, Kansas & Texas Ry. Co		40,000,000 00
2d " " " " "		20,000,000 00
1st " Extension Bonds, Missouri, Kansas & Texas Ry. Co		3,254,000 00
1st " St. Louis Division Refunding Bonds, Missouri, Kansas — Texas Ry. Co		1,852,000 00
1st " Bonds, Dallas & Waco Ry. Co		1,340,000 00
1st " " Missouri, Kansas & Texas Ry. Co. of Texas		4,505,000 00
1st " " Boonville Railroad Bridge Co		1,000,000 00
1st " " Sherman, Shreveport & Southern Ry. Co		1,689,000 00
1st " " Missouri, Kansas & Eastern Ry. Co.		4,000,000 00
2d " " " " "		113,000 00
1st " " Kansas City & Pacific Railroad Co		2,500,000 00
1st " " Missouri, Kansas & Oklahoma R. R. Co		5,468,000 00
1st " Extension Bonds, Missouri, Kansas & Oklahoma R. R. Co		337,000 00
1st " Bonds, Texas & Oklahoma R. R. Co		2,347,000 00
Equipment Notes and Bonds, deferred payments extending till 1911		4,315,896 21
Improvement Fund		909,731 38
Interest accrued but not due		820,000 00
Taxes accrued but not due		164,839 28
Sundry Accounts		34,375 79
Current Liabilities.		
Interest due for coupons not presented	$165,905 00	
Vouchers	1,932,666 63	
Pay-rolls	669,090 05	
Due Foreign Lines	73,977 07	
		2,841,638 77
Income Account		911,842 23
		$178,626,543 64

10 For all practical purposes of this suit the foregoing statement of assets and liabilities shows the financial condition of your orator at the present time. Your orator alleges that the following is substantially a correct statement of its annual fixed charges:

Interest on bonds as follows:

Class of bond.			Amount outstanding.	Rate of interest.	Amount accrued during year.	
Missouri, Kansas and Texas Railway Co.	1st Mortgage		$40,000,000 00	4%	$1,600,000 00	
" " " "	2d "		20,000,000 00	4%	800,000 00	
" " " "	1st "	Extension	3,254,000 00	5%	146,616 66	
" " " "	1st "	St. Louis Division Refunding	1,852,000 00	4%	74,080 00	
Missouri, Kansas and Texas Railway Co. of Texas	1st "		4,505,000 00	5%	198,375 00	
Missouri, Kansas and Eastern Railway Co.	1st "		4,000,000 00	5%	200,000 00	
" " " " "	2d "		113,000 00	5%	5,650 00	
Kansas City and Pacific Railroad Co.	1st "		2,500,000 00	4%	100,000 00	
Dallas and Waco Railway Co	1st "		1,340,000 00	5%	67,000 00	
Boonville Railroad Bridge Co.	1st "		1,000,000 00	4%	40,000 00	
Sherman, Shreveport and Southern Railway Co.	1st "		1,689,000 00	5%	84,450 00	
Missouri, Kansas and Oklahoma Railroad Co.	1st "		5,468,000 00	5%	273,400 00	
Texas and Oklahoma Railroad Co.	1st "		2,347,000 00	5%	117,350 00	
Missouri, Kansas and Texas Railway Co.	1st "	Refunding	1,484,000 00	4%	59,360 00	
			$88,405,000 00		$3,766,281 66	
Rentals on tracks and terminals					$703,068 30	
Taxes					338,240 10	
						$4,807,590 06

The following is a copy of the income account of the Missouri, Kansas and Texas Railway System for the year ending June 30th, 1904:

Gross earnings		$17,766,595 41
Operating expenses		12,659,469 75
Net earnings		$5,107,125 66
Add —		
Dividend and interest on stock and bonds owned	$293,916 65	
Miscellaneous Income	22,806 25	
		316,722 90
		$5,423,848 56
Less —		
Interest on Bonds	$3,316,171 66	
Rentals, Tracks and Terminals	703,068 30	
Taxes	338,240 10	
Equipment payments during year	1,353,943 35	
		5,711,423 41
Deficit		$287,574 85

II.

This cause arises under the constitution and laws of the United States, for that it seeks to enjoin the enforcement and adoption as against our orator of the provisions, requirements and prohibitions in the acts of the legislature of Missouri mentioned in paragraph VII hereof (hereinafter called the Acts of 1905); said acts
11 being unconstitutional, violative of the provisions of the constitution of the United States and the amendments thereto, and contrary to the laws of the United States, all as hereinafter more particularly stated. The matter and amount in dispute exceeds, exclusive of interest and costs, the sum or value of two thousand dollars.

III.

The defendants John A. Knott, Joseph P. Rice and Frank A. Wightman, constitute the duly elected and qualified Board of Railroad and Warehouse Commissioners of the State of Missouri, and are citizens and residents respectively of Marion County, City of St. Louis, and Barry County therein, their statutory official residence being in Cole County therein. The defendant the Board of Railroad and Warehouse Commissioners is a corporation organized under the laws of the State of Missouri and is a citizen and resident of the Central Division of the Western District of the Circuit Court of the United States for the State of Missouri. Each of said parties is, by the law of which the Act of 1905 is a part, required to do and perform the special duties hereinafter mentioned.

Defendant, Herbert S. Hadley, is Attorney-General of the State of Missouri, and as such is a citizen and resident of Cole County therein. Defendants C. C. Kelley and M. P. Belch are respectively prosecuting attorneys, citizens and residents of Pettis and Cole Counties, Missouri. Each of said parties is by the law of which the acts of the legislature mentioned in paragraph VII hereof are parts required to do and perform the special duties hereinafter mentioned.

IV.

Defendants J. F. Parker, Geo. West and M. Doherty, each of whom is a citizen and resident respectively of the counties of Jackson, Henry and Pettis, Missouri, are herein designated as shippers, each being a person engaged in shipping over your orator's road and other roads in the State, to and from points therein the commodities, the rates of which are attempted to be limited by the said Acts of 1905. These defendants represent a class of shippers so numerous that it is impracticable to attempt to join them all, and the above named defendants are made parties hereto for the purpose of determining the rights as against your orators of all shippers under the said Acts of 1905.

V.

12 Article 4 of Chapter 12 of the Revised Statutes of Missouri, 1899, of which the Acts of 1905 have become a part, made

provision for the classification of railroads and freights and provision for maximum rates. Sections 1191, 1192 and 1193 thereof provide as follows:

SEC. 1191. Roads Classified.—All railroads in the State of Missouri are hereby divided into three classes, to be known as class A, class B and class C. Class A shall include all through or trunk line railroads. Class B shall include all of the branch roads owned, leased or occupied by such through or trunk line railroad companies or corporations. Class C shall include all other railroads or parts of railroads owned, leased or occupied, or which may hereafter be owned, leased or occupied in this State, either wholly or in part.

SEC. 1192. Passenger Charges Regulated.—Any individual, company or corporation owning, operating, managing or leasing any railroad or part of a railroad in this State, in the several classifications as herein prescribed, shall be limited to a compensation per mile for the transportation of any person with ordinary baggage not exceeding one hundred pounds in weight, as follows: In class A, not exceeding three cents per mile, and in classes B and C not exceeding four cents per mile: Provided, that no such individual, company or corporation shall charge, demand or receive any greater compensation per mile for the transportation of children of the age of twelve years or under, than one-half of the rate above prescribed; and provided further, that the rates for transportation herein prescribed may be reduced, as hereinafter provided.

SEC. 1193. Freight Classified.—All freights hereafter transported upon any railroad or part of a railroad in this State are hereby divided into four general classes, to be designated as first, second, third and fourth classes, and into seven special classes, to be designated as class- D, E, F, G, H, I and J. Class D shall comprise all grain in carloads. Class E shall comprise all flour in lots of fifty barrels or more, and lime in lots of twenty-four barrels or more. Class F shall comprise salt in lots of sixty barrels or more, and cement, water-lime and stucco in lots of twenty-four barrels or more. Class G shall comprise lumber, lath and shingles, in car-loads. Class H shall comprise live stock, in car-loads. Class I shall comprise agricultural implements, furniture and wagons. Class J shall
13 comprise coal, brick, sand, stone, railroad ties and cord-wood, and all heavy fourth-class articles, in car-loads; and in addition to the several articles in the said special classes, shall be added other articles as and in the manner hereinafter prescribed, except in classes D, E, G and H; and all articles not before enumerated or subsequently set into said classes as hereinbefore provided, shall be placed in and belong to the four general classes, to be classified by the railroad commissioners to be hereinafter provided.

Section 1194 fixed the maximum rates for the seven special classes of freight designated as classes D, E, F, G, H, I and J, respectively. The statutes of the State also provide for the election and qualification of the railroad commissioners aforesaid, and prescribe their special duties, among which special duties in relation to the adoption and enforcement of the said Act of 1905 are these: To require to be posted by each railroad company in the State in its depot or railroad

station and to be filed in the office of the railroad commissioners, a schedule of rates to be charged, which in no event must exceed the maximum rates at any time fixed by law, nor those maximum rates fixed by the Acts of 1905, which rates so shown by the schedules so filed with the railroad commissioners cannot be advanced except after ten days' public notice plainly stating the changes proposed to be made in the schedule, and the time when said changes will go into effect; to require to be likewise filed and published all joint tariff arrangements with other common carriers; to see that all such schedules of rates are observed by all common carriers; if and when the common carrier shall neglect or refuse for thirty days to file or publish its schedule as aforesaid, as commissioners to make out and print such schedule for such carrier, delivering to it a copy thereof which shall be likewise posted in the depots and stations; to enforce statutory provisions imposing severe penalties for a failure to publish and file said schedule; to hear all complaints made by any person for a violation of any of said provisions of law as well as to institute on its own motion any such complaint. The statute of the State also especially provides for the adoption and enforcement of the provisions of the Acts of 1905 by requiring the prosecuting attorney of each county to prosecute any carrier violating the provisions of the law aforesaid whenever directed by the railroad commissioners, receiving for his services compensation equal to the amount allowed by law on forfeited recognizances, and the attorney-general is required to assist in such prosecution and to prosecute other cases whenever directed by the railroad commissioners.

14 VI.

The legislature of the State of Missouri in 1903 passed an act, herein called the Act of 1903, reading as follows:

Corporations: Railroads—Freight Rates.

An act entitled An act to amend chapter 12 of the Revised tSatutes of the State of Missouri of 1899, entitled "Corporations, private," by adding two new sections after section 1194, to be known as sections 1194*a* and 1194*b*, providing that the board of railroad and warehouse commissioners shall fix, maintain, establish, reduce and modify freight rates upon all railroads in this State, and providing for the manner of so doing and enforcing the same.

SECTION
I. Adds two new sections to article 4 of chapter 12.
1194*a*. Powers and duties of railroad commissioners to fix or modify freight rates, etc.
SECTION
1194*b*. Railroads to furnish commissioners with schedules of rates, etc.—power of board to examine persons, administer oaths, etc.

Be it enacted by the General Assembly of the State of Missouri as follows:

SECTION 1. That chapter 12 of article 4 of the Revised Statutes of Missouri of 1899 be and the same is hereby amended by adding thereto two new sections, to be between sections 1194 and 1195 of said chapter, to be known as section- 1194*a* and 1194*b*, providing for the fixing, modifying and enforcing freight rates, as follows:

SECTION 1194*a*. The board of railroad and warehouse commissioners are hereby authorized, empowered and required to fix, maintain and establish just and reasonable freight rates on all classes of freight, from, to and between all points and stations upon and along all lines of railroad in this State; and said board is authorized and empowered to reduce, change and modify any and all such freight rates so fixed and established as hereinafter provided. And said board may, of its own motion, and shall, upon the sworn complaint of any shipper, mayor, councilman, alderman or trustee of any city, town or village, first giving five days' written notice to the railroad company affected, or complained against, proceed to fix, establish, modify or reduce the freight rates or charges of any such road from, to or between any and all points or stations in Missouri; and any and all orders fixing, establishing, modifying or reducing any such freight rates or charges shall be the judgment of said board and constitute the legal rates or charges that such railroad company may collect for the transportation of freight from, to or between its stations in Missouri; and said board shall, immediately upon the fixing, establishing, modifying or reducing of the freight rates or charges of any railroad company, notify such railroad in writing thereof; and said railroad shall comply with the orders and judgments of said board with reference to such freight rates or charges, within ten days after such notice. And if any railroad fails, refuses or neglects to put the rates so ordered by said board into effect and operation within ten days after notice, the board shall submit a certified copy of its order to the attorney-general of the State, with notice that such railroad (designating the same), has failed to comply therewith. And the attorney-general, upon receipt thereof, shall immediately institute suit in the name of said board of railroad and warehouse commissioners against such railroad, in the Supreme Court of the State, by mandamus or other proper remedy, to enforce said order of said board.

SECTION 1194*b*. All railroad companies doing business in this State shall, upon the request of the board of railroad and warehouse commissioners, furnish to said board copies of all its schedules of freight rates and charges, and all other papers and documents, including bills of lading and contracts for transportation of freight affecting in any way the transportation of freight within, into and from this State. And said board shall have full power and authority to examine all officers, agents of said railroad companies, and all other persons, under oath or otherwise, to procure the necessary information to make just and reasonable freight rates or charges, and to ascertain if the freight rates so fixed by said board are being observed or violated. And said board shall have power to administer oaths, to issue subpœnas for persons and papers, examine witnesses and to enforce the same in like manner as the Circuit Court of this

State. And in the issuance and enforcement of the papers and process above, the jurisdiction shall be co-extensive with the State.

Approved April 6, 1903.

There was then and there adopted sections 1194*a* and 1194*b* to become part of article 4 of chapter 12 of the Revised Statutes of Missouri, 1899, to be known as sections 1194*a* and 1194*b* and to be inserted between sections 1194 and 1195 of the said Revised Statutes.

16 VII.

The legislature of the State of Missouri at its session of 1905, passed the acts herein called the Acts of 1905, reading as follows:

Corporations, Private: Railroad Classification—Freight Charges Regulated.

An act entitled "An act to amend chapter 12 of the Revised Statutes of Missouri, revision of 1899, entitled 'Corporations, Private,' by repealing section 1194 of said Revised Statutes, being part of article IV of said chapter concerning railroad classification—charges—commissioners, and to enact in lieu thereof the following new sections providing for the regulation of freight charges by railroads and the recovery of penalties for the violation thereof."

SECTION
1. Repeals section 1194 and enacts three other sections in lieu.
1194. Fixes maximum freight rates.
SECTION
1194*a*. Penalty for violation.
1194*b*. Repeals conflicting acts, rules and regulations.

Be it enacted by the General Assembly of the State of Missouri as follows:

SECTION I. That section 1194 of the Revised Statutes of Missouri, 1899, concerning the regulation of freight charges, being part of article IV, of chapter 12, entitled "Corporations, private," be and the same is hereby repealed and the following, to be known as sections 1194, 1194*a*, 1194*b*, of said Revised Statutes, be enacted in lieu thereof, so that said sections shall be collocated between the existing sections 1193 and 1195 of said Revised Statutes of 1899.

SECTION 1194. No individual, company or corporation owning, operating, managing or leasing any railroad or part of railroad, designated in section 1191 as in classes A, B, or C shall demand; charge or receive a greater or higher rate for carrying from initial to terminal points in this State articles named in the several classes herein designated, than is hereinafter provided for, namely: Class D, in car loads of 40,000 pounds minimum weight, not exceeding five cents per one hundred pounds for the first 25 miles and not exceeding one-half cent per hundred pounds for the second 25 miles,

or fractional part thereof, and not exceeding one-half cent
17 per hundred pounds for each additional 25 miles or fractional part thereof. Class E, in car loads of 24,000 pounds minimum weight not exceeding five cents per one hundred pounds for the first 25 miles and not exceeding one-half cent per hundred pounds for the second 25 miles, or fractional part thereof, and not exceeding one-half cent per hundred pounds for each additional 25 miles or fractional part thereof. Class F, in car loads of 30,000 pounds minimum weight, not exceeding 5 cents per one hundred pounds for the first 25 miles and not exceeding one-half cent per hundred pounds for the second 25 miles, or fractional part thereof, and not exceeding one-half cent per hundred pounds for each additional 25 miles or fractional part thereof. Class G, in car loads of 30,000 pounds minimum weight, not exceeding 5 cents per one hundred pounds for the first 25 miles and not exceeding one-half cent per hundred pounds for the second 25 miles, or fractional part thereof, and not exceeding one-half cent per hundred pounds for each additional 25 miles, or fractional part thereof. Class H, in car loads in common cars, measuring inside from 29 feet to and including 30 feet and 6 inches in length (to be known as standard cars) not exceeding $6.00 per car load for the first 25 miles, and not exceeding $3.00 per car load for the second 25 miles, or fractional part thereof, and not exceeding $2.00 per car load for each additional 25 miles, or fractional part thereof, of over 12 miles. For the carriage of any of the articles comprising class H in cars of other lengths for the distances above specified, the following percentages of the foregoing rates per car load shall not be exceeded, namely; In cars of length less than 29 feet, 94 per cent; in cars of length over 30½ feet to and including 32 feet, 104 per cent; in cars of length over 32 feet to and including 33 feet and 9 inches, 107 per cent; in cars of length over 33 feet and 9 inches to and including 36 feet, 110 per cent; in cars of length over 36 feet to and including 38 feet, 113 per cent; in cars of length over 38 feet to and including 40 feet, 116 per cent; in cars of length over 40 feet to and including 42 feet, 125 per cent; in cars of length over 42 feet to and including 44 feet, 135 per cent; in cars of length over 44 feet, 140 per cent of the rates herein specified for cars of the standard length of 29 feet to and including 30 feet and 6 inches shall not be exceeded. All the foregoing lengths to be taken by inside measurements. Class I, in carloads of 20,000 pounds minimum weight, not exceeding $14.00 per car load for the first 25 miles and not exceeding $2.00 per car load for each additional 25 miles, or fractional part thereof. In computing
18 the rate of freight according to the provisions of this article, the distance shall be computed from the point where it is received to the point of destination in the State, notwithstanding it may pass from one road to another.

SECTION 1194*a*. That for the violation of the foregoing sections the railroad company so offending shall forfeit and pay to any person thereby affected the freight rate charged, demanded, or received in excess of the rates prescribed in said section, together with all actual damages caused thereby, to be recovered in any court having

jurisdiction thereof by the existing law. And (if) the plaintiff in such action recover judgment therein, the court shall treble the same and the plaintiff shall on motion be allowed a reasonable attorney's fee for bringing the action.

SECTION 1194*b*. All acts and parts of acts, and all rules and regulations, freight schedules, classification and groupings by railroad companies or the railroad and warehouse commissioners of this State in conflict with the provisions of this act are hereby repealed and declared void.

Approved April 15, 1905.

Corporations, Private: Railroad Classification, Charges—Commissioners.

An act to amend Article IV, chapter 12, of the Revised Statutes of Missouri of 1899, entitled "Railroad classification, charges, commissioners," by adding a new section thereto, to be known as section 1195*a*.

SECTION 1. Fixing charges for carrying undressed stone, crushed rock and building or paving brick.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION 1. That Article IV, chapter 12, of the Revised Statutes of Missouri of 1899, entitled "Railroad classification, charges, commissioners," be, and the same is hereby amended by adding a new section thereto, to be known as section 1195*a*, to read as follows:

SECTION 1195*a*. No individual, company or corporation owning, operating, managing or leasing any railroad or part of a
19 railroad in this State, shall charge for or receive for carrying a car-load of forty thousand pounds of undressed stone, sand or building or paving bricks more than forty cents per ton for the first ten miles, twenty cents per ton for the second ten miles or more than five cents per ton for each additional ten miles, and any excess in weight shall be charged for at the same rate per ton as for an even car load.

Approved April 14, 1905.

Said acts will under the Constitution of the State of Missouri take effect on the 16th day of June, 1905, which will be ninety days after the adjournment of the session of the legislature at which the act was passed. The rates now being lawfully charged by your orator for the transportation of freight of the character mentioned in the said act, are shown in schedules now on file with the railroad commissioners and posted in your orator's depots and railroad stations, and are far in excess of the maximum rates fixed in said Acts of 1905, so that when said acts become effective, if permitted to be enforced, it will require such a reduction in your orator's said rates as to make imperative change in the said schedule, which change your orator does not propose to make, and cannot make

without jeopardizing its property interests. The railroad commissioners propose and threaten, and will, unless enjoined herein, enforce the special provisions of the statute of the State for the enforcement of said Acts of 1905 by entering upon investigations, both upon its own instigation and upon the complaint of shippers, and by determining and adjudging your orator's present schedule of rates posted and filed as aforesaid to be unreasonable, unjust and extortionate, for the sole reason that said rates are prescribed by the said Acts of 1905, and by requiring under the pain of large penalties threatened to be enforced, your orator to file and publish a new schedule fixing rates not in excess of those mentioned in said Acts of 1905. Besides which, said railroad commissioners propose, as specially required by law, to file, post and publish as your orator's said schedule the maximum rates fixed in said acts, if and when your orator refuses so to do, and they propose to direct each of the prosecuting attorneys in each of the counties through which the line of your orator runs, to prosecute and recover of your orator the large and excessive penalties provided by law, and to direct the defendant, the attorney-general, to assist in such prosecutions, and to direct the defendant attorney-general to prosecute your orator and re-
20 cover the penalties provided by law for its failure to comply with the orders which the railroad commissioners propose from time to time to make in investigations instituted for the enforcement of the said Acts of 1905, by compelling your orator to adopt rates in accordance therewith. Said prosecuting attorneys and attorney-general will, unless restrained herein, conduct said prosecutions and seek to recover said penalties.

The shippers along the line of your orator's railroad are very numerous and are daily engaged in making and receiving shipments to and from points in Missouri of freight of the special classes designated in the Acts of 1905, so that unless restrained by said court, there will be instituted a multiplicity of suits to recover of your orator treble damages sustained, together with attorney's fees in each case. Said parties being so numerous, and the causes of action which will accrue, so many, if the Acts of 1905 be enforced, that it is not practicable to make more than a part of said shippers defendants hereto, but all other shippers in the counties in the State where your orator's lines of road extend, are likewise interested with those named as defendants herein, so that such as are named as such defendants should defend for all those having like interest, any such omitted party being permitted to become a defendant herein if so desired, to the end that all persons having a like interest will be bound by the decree to be entered herein, and the court have an opportunity to determine once for all the validity of said Acts of 1905.

VIII.

Said Acts of 1905 are invalid and inoperative, and of no force or effect, for each of the following reasons:

(a) The Acts of April 14th and 15th, 1905, fix rates confiscatory in their nature, unreasonable in amount, insufficient to permit your

orator to operate its property in Missouri without loss, making it impossible for freight to be carried by your orator between points in Missouri at any profit, all of which is contrary to and violative of the provisions of the constitution of the United States, and particularly of the fourteenth amendment thereto, prohibiting the taking of property without due process of law, and guaranteeing to all persons equal protection of the laws.

(*b*) They are invalid as alleged in paragraphs I, XI and XIII hereof, whereby they are violative of said amendment to the constitution of the United States.

21 (*c*) The Act of April 15, 1905, provides that in computing the rate of freight, the distance shall be computed from the point where it is received to the point of destination in the State, notwithstanding it may pass from one road to another. This impairs your orator's freedom of contract, fixes a rate for it based upon carriage over the line of another road, whereby the provisions of the Federal constitution and the amendments thereto hereinbefore referred to, are violated, and the freedom of contract guaranteed by section 4, article 2 of the State constitution, denied.

(*d*) The Act of April 15, 1905, provides in section 1194 that no individual, company or corporation owning, operating, managing or leasing any railroad or part of railroad designated in section 1191 as in classes A, B or C shall demand, charge or receive a greater or higher rate for carrying from initial to terminal points in this State, articles named in the several classes therein designated than as therein provided for, but it also provides in section 1194*a* that the penalty for a violation of the act shall be enforced only against railroad companies, thereby exempting individuals from such penalties. This is a discrimination between individuals and companies, and denies to your orator the equal protection of the laws guaranteed it by the fourteenth amendment to the constitution of the United States.

(*e*) The Act of April 15, 1905, attempts to adopt and create as part of article 4 of chapter 12 of the Revised Statutes of Missouri, 1899, two sections called sections 1194*a* and 1194*b*, when the Act of 1903 adopted sections so numbered as part of the same article and chapter. There was by the Act of 1905, no repeal nor attempted repeal of said Act of 1903. The Act of 1905 cannot be treated as amendatory to the Act of 1903 because it is insufficient, since it does not in any wise comply with the provisions of section 34, article 4 of the constitution of the State of Missouri providing:

"No acts shall be amended by providing that designated words thereof be stricken out, or that designated words be inserted, or that designated words be stricken out and others inserted in lieu thereof; but the words to be stricken out, or the words to be inserted, or the words to be stricken out and those inserted in lieu thereof, together with the act or section amended, shall be set forth in full as amended."

The act is, therefore, invalid because the law as it now stands is uncertain, there being two separate enactments upon two
22 different subjects designated as sections 1194*a* and 1194*b* of article 4 of chapter 12 of the Revised Statutes of 1899.

IX.

Your orator states that the Missouri, Kansas & Texas entire system consists of 3043 miles of railroad, and in acquiring and constructing said system, there has been expended large sums of money for right of way, ties, iron, grading, bridging, equipment, and for all the facilities and appliances necessary for the operation of the railways, and, at great cost, there has been acquired terminals and terminal facilities at various cities and towns to and through which its system extends. All of said railways, including those in Missouri, were constructed and fairly acquired at a fair and reasonable cost; they were judiciously located, and have at all times been properly and economically operated. Its capitalization in bonds and stocks aggregates $61,361.29 per mile of owned railroad for its entire system, which capitalization is fair and reasonable. Its fixed charges are reasonable. All the lines in Missouri secure and receive a due, fair and reasonable proportional benefit of the entire system, and the value of the property in Missouri as well as its capacity for serving the public, is proportionately increased and augmented thereby. The cost of constructing and replacing said railroad in Missouri and providing and furnishing its equipment and terminals, as well as constructing and replacing its entire system to-day would largely exceed the original cost. Upon the value of the property of your orator, it has not been able in the past to have any kind of returns in the way of dividends on either preferred or common stock, although it was operated as part of a whole system at the prevailing higher rates. The said rates fixed in said Acts of 1905 are unjust, unfair confiscatory and unreasonable.

X.

The rates now charged by your orator for State shipments of the classes of freight mentioned in the Acts of 1905 are in excess of the maximums therein fixed. If, for the classes of freight mentioned in the Acts of 1905, charges should be by your orator made at the maximum rates therein fixed for State shipments, your orator would be required to do such business not only without profit, but at a loss, and without any return upon its investment in this State. Such rates in said Acts of 1905 mentioned are unjust, unreasonably
23 low, confiscatory in their nature and will not make any return upon the investment in the property of your orator in this State. Taking the gross receipts of all the State business of whatsoever kind which your orator does, can or will do in Missouri when charging the maximum rates fixed by the Acts of 1905 for the classes of freight therein mentioned, and deducting from the total receipts the cost of doing such business in the State, there will not be sufficient to pay operating expenses, and there will not be left any sum as profit or as a return upon the value of the property of your orator devoted to the use of such business in the State. The maximum rates fixed by the Acts of 1905 for each class of freight mentioned in the Acts of 1905 is not sufficient to pay the cost of carriage thereof.

XI.

The total earnings of your orator from local and State business in Missouri and on which it charged and could only charge the local State rates for the last three years were not in excess of: For the fiscal year ending in 1902, $909,279.10; 1903, $959,155.17; 1904, $1,046,527.32.

The expenses of doing such local and State business for said three years was in excess of these figures: For the fiscal year ending in 1902, $913,937.75; 1903, $961,938.49; 1904, $1,006,422.35.

The reduction of rates under said Acts of 1905 will not increase the local traffic, and the volume of State and local business will not be more in 1905 than it was in 1904, while the expense of doing such business will be as great, and if in the future said business increases there will be a proportional increase in said expenses. The value of the part of your orator's owned property in Missouri used in doing such State and local business is not less than $8,607,594.37

If, for the classes of freight mentioned in the Acts of 1905, your orator should charge the maximum rates therein fixed, its total gross receipts from local or State traffic in Missouri will be reduced by at least $61,473.75 per annum, and the expenses aforesaid will not be lessened, which makes the attempted reduction in both gross and net receipts unfair and unjust and fails to give a fair return upon the investment in your orator's said property, and the enforcement of said act will compel your orator to do its local and State business in such a way as not to permit it to make a fair and reasonable profit thereon.

24 XII.

There are in this State carrying therein the classes of freight mentioned in said act, and hence affected thereby, the following companies owning lines of railroad:

Chicago, Burlington & Quincy Railroad Company, Atchison, Topeka & Santa Fe Railroad Company, Missouri Pacific Railway Company, St. Louis, Iron Mountain & Southern Railway Company, St. Louis, Kansas City & Colorado Railroad Company, St. Louis & San Francisco Railroad Company, Chicago & Alton Railroad Company, Chicago, Milwaukee & St. Paul Railway Company, Wabash Railroad Company, Kansas City Southern Railway Company, St. Louis Southwestern Railway Company, Chicago & Great Western Railway Company, St. Joseph & Grand Island Railroad Company, St. Louis & Hannibal Railroad Company, Mississippi River & Bonne Terre Railroad Company, Illinois Southern Railway Company and Kansas City, Springfield & Southern Railroad Company.

Each and all of said companies claim that the maximum rates fixed by said Acts of 1905 are confiscatory in their nature, and if charged would result in said company doing its State business without any profit, which as a fact is true. Each of said companies has filed or will at once file a bill similar to that now presented by your orator. Even if in this cause it should be held that such maximum rates should be valid as against your orator, yet as a matter of fact, same

are unreasonably low as against each of said other companies and will not permit either of said companies to make a profit upon its State business, and therefore said act is invalid as against said company. This being true, the act, even if held valid as to your orator, is unconstitutional because it would thereby become discriminatory in that it would not apply alike to all persons or corporations operating railroads in this State, whereby the provisions of the constitution of the United States, and the amendments thereto hereinbefore mentioned, are violated.

XIII.

Said Acts of 1905 fix and establish maximum rates which are unjust, unreasonable and unconstitutional in this: the cost of transporting live stock is greater than that of any of the other commodities in which a reduction is made, yet said acts reduce the rate thereon on an average of 29.6%, while the reduction in rates on salt and cement is only 22%, and in the case of lumber, lath and shingles of 17.8%. The different articles transported on your orator's railway have been arranged in classes according to cost of carriage, price, risk of injury, bulk, volume of traffic, and other circumstances well understood, and have remained in substantially the same classes for many years, which has been recognized approved and enacted into law by the statutory classification in effect in Missouri since 1893, and as required by its Railroad Commissions. The unequal, partial, arbitrary reduction in rates upon articles affected by said Acts of 1905 as compared with other commodities and between the different commodities themselves included in said acts, not only works an injustice between the shippers, purchasers, manufacturers of the State of Missouri and deprives them of their property without due process of law and deprives them of the equal protection of the laws, but likewise operates to deprive your orator of its property without due process of law and deprives it of the equal protection of the laws in that the legislature, having established maximum rates of charges for the transportation of all kinds of property, which are presumably fair and reasonable, now attempts to further regulate the affairs of your orator and to require it to discriminate in favor of certain persons and shippers and to give them a right of transportation for a less rate than the general rate heretofore fixed by law and less than is just and reasonable in view of the cost to the carrier or to the value of the service rendered to the shipper.

XIV.

The rates in force and effect on your orator's lines of railroad in the State of Missouri, prior to March 1st, 1904, were shown in its Local Distance Tariff No. 919, and the supplements thereto, numbered 1 to 6, both inclusive. The rates fixed therein and thereby were in most cases less than the maximum rates then in force and effect as fixed by Sec. 1194, Revised Statutes of Missouri 1899. Under the provisions of the Act of the Legislature of April 6th,

1903, the Board of Railroad & Warehouse Commissioners on the first day of February, 1904, promulgated a tariff of freight rates called, "Reasonable Maximum Freight Schedules issued by the Railroad & Warehouse Commissioners, effective March 1st, 1904, applying on all classes and commodities between all points in Missouri as designated."

On February 25th, 1904, your orator, under the pains and penalties prescribed by the law of Missouri, issued its local distance tariff No. 2750, applying on all classes and commodities, between stations in the State of Missouri, and effective March 1st, 1904, and thereby published and promulgated the rates as fixed by the said defendant, the Board of Railroad & Warehouse Commissioners of the State of Missouri in its said tariff, issued February 1st, 1904, and effective March 1st, 1904, and the rates fixed by the defendant, the Board of Railroad & Warehouse Commissioners in its said tariff effective March 1st, 1904, and adopted and promulgated by your orator as aforesaid, are greatly less than the rates previously in effect on the same classes, and commodities of freight between stations on your orator's lines of railroad under its said tariff No. 919 and the supplements thereto hereinbefore referred to and greatly less than the rates fixed in said section 1194 of the Revised Statutes of Missouri, 1899, and experience in the application of said rates has demonstrated that they are unreasonably low, unremunerative and confiscatory in their nature.

On March 14th, 1905, the defendant, the Board of Railroad & Warehouse Commissioners, and the defendant, Joseph P. Rice, John A. Knott and Frank A. Wightman, promulgated an amendment or supplement known as Amendment No. 1 to their said tariff effective March 1st, 1904. On May 3d, 1905, the defendant, the Board of Railroad & Warehouse Commissioners, promulgated a tariff called "Missouri Statute Maximum Freight Rates on commodities named, applying between all points in Missouri effective June 17th, 1905," as a further amendment or supplement to
27 their said tariff of March 1st, 1904, wherein and whereby the rates on the commodities named in and covered by the acts of the Legislature of Missouri, of April 14th and 15th, 1905, were still further reduced to the maximum rates prescribed by said acts. All said tariffs referred to herein are on file with said Board of Railroad & Warehouse Commissioners.

Your orator avers that each and all of the tariffs, rates, charges and classifications prescribed by your orator in force prior to March 1st, 1904, when the said tariff was as aforesaid promulgated by the defendant, the Board of Railroad and Warehouse Commissioners of the State of Missouri, became effective were in no cases unreasonably high, and the same were not in restraint of the free movement of the commodities affected thereby but in many cases were unreasonably low; that the same were in general, far less than the rates and charges for like transportation of like articles prior to the acquisition and construction of the lines of railway of your orator and were less than the maximum statutory rates then in force as provided by section 1194 of the Revised Statutes of Missouri, 1899;

and yet the same were not sufficient to and did not enable your orator to pay any dividends whatever upon its capital stock, and your orator avers that the reduction of such rates which were in effect on your orator's lines of railway prior to March 1st, 1904, and the establishment of further reduced rates is and was unjust and unreasonable, and in effect a confiscation and appropriation to the use of others of all or a portion of your orator's property and a taking of the same without due process of law and without compensation.

Your orator further shows that the local State rates on freight commodities now in force and posted as required by law were arrived at and put in force on the 1st day of March, 1904, and have been continued in force since then in the following manner and under the following circumstances: The defendant, the Board of Railroad and Warehouse Commissioners of Missouri, claiming to have power to fix such local rates under the act of the legislature of Missouri approved April 6th, 1903, and herein copied, notified all the railroad Companies doing business in Missouri that it would proceed to fix and put in force such freight rates under said act, and all the said railroad companies, including your orator, while not conceding the power claimed by the said board to fix such rates, voluntarily appeared before said board and at repeated hearings held before and at many conferences with said board, and after full and careful investigation, the said companies, including your orator, and said board reached
an amicable understanding that, if the board would put in
28 the rates that are now in force, then the said companies would
abide by them and make them their rates until and so long as it was not demonstrated that said rates so agreed upon were unreasonably low and confiscatory. As a result of such hearings, conferences and amicable understanding, the present local State freight rates were put in force, and they were put as low as the said companies could possibly, in justice to their various bondholders and stockholders, stand. While your orator states upon information and belief and upon the advice of its counsel that said act of the legislature of Missouri is unconstitutional and void, inasmuch as the said legislature has no power itself to fix rates, but only to establish reasonable maximum rates to prevent extortion, and therefore could not delegate power to the said board to fix rates, yet that the present rates were acquiesced in by the railroad companies and accepted as their rates, in part under duress, so as to have peace with the said Board, that the said Board cannot now say that the rates should be reduced, for there has been no change in conditions to make such reduction proper, necessary or right, but, on the contrary, the cost of wages and material entering into the operation, repair and maintenance of the railways of the State, including that of your orator, has been for the last several years increasing from year to year.

Your orator, upon the advice of its counsel, distinctly further avers that the acts of the legislature of 1905 which attempt to fix the highest rates on the freight commodities therein mentioned

are unconstitutional and void, not only because they fixed such highest rates so low as to be unreasonable and confiscatory, but also because the said legislature did not attempt, as shown by the face of said acts, to establish reasonable maximum rates, but only fixed, arbitrarily maximum rates, and the said acts on their face contain no evidence that the said legislature intended to establish reasonable maximum rates, but only that they fixed, arbitrarily, maximum rates. Inasmuch as the constitution of Missouri only grants the legislature the power to fix reasonable maximum rates, your orator is advised by counsel that the said acts to be valid on their face must show that the intention was to fix reasonable maximum rates, using the word 'reasonable,' for if that word was important enough to be put in the constitution, it cannot be omitted in acts attempted to be passed in pursuance of such constitutional provision.

29 In consideration whereof, and forasmuch as your orator is remediless in the premises, and by the strict rules of the common law can only have relief in a court of equity where matters of this kind are properly cognizable and relievable, your orator prays: First, That the said acts of the legislature of Missouri set forth in paragraph VII. of this bill, and for convenience called the Acts of 1905, be declared unconstitutional, unenforcible and not binding upon your orator. Second, That the defendants, John A. Knott, Joseph P. Rice, and Frank A. Wightman, railroad and warehouse commissioners of the State of Missouri, their successors in office, the defendant the Board of Railroad and Warehouse Commissioners its and their agents and servants, be temporarily and permanently enjoined and restrained from taking any step to put in force the maximum rates mentioned in said Acts of 1905, from requiring your orator to post same at any place or to file same with them; from receiving a schedule thereof to be filed with them; from taking or making out, or printing, or delivering any schedule of rates for your orator containing the maximum rates fixed by said act; from instituting or permitting any investigation of any complaint that any rate is unreasonable, extortionate or unjust because higher than the maximum rate fixed by said Acts of 1905; from directing the attorney-general of the State or any prosecuting or other attorney therein to prosecute or assist in prosecuting your orator, directly or indirectly, for any failure to file the schedule adopting the said maximum rates, or for any failure to recognize, adopt or comply with said Acts of 1905. Third, That defendants, Herbert S. Hadley, the attorney-general, and C. C. Kelly and M. P. Belch, prosecuting attorneys of Pettis and Cole Counties and their assistants, be temporarily and permanently enjoined and restrained from prosecuting or assisting in the prosecution of any suit or action against your orator to enforce against it in any action, directly or indirectly, any penalty in any wise dependent or based upon the failure of your orator to recognize and abide by the said Acts of 1905. Fourth, That the defendants J. F. Parker, Geo. West and M. Doherty and all other shippers affected by this proceeding, be temporarily and permanently enjoined and restrained from instituting any action under or taking any steps to collect any

penalties or damages for the alleged violation of said Acts of 1905. Fifth, That your orator have such other and further relief as may be just and equitable.

And may it please your Honors to grant unto your orator
30 a writ of subpœna of the United States of America, issuing out of and under the seal of this honorable court, directed to the said John A. Knott, Joseph P. Rice and Frank A. Wightman, railroad commissioners of Missouri; the Board of Railroad and Warehouse Commissioners of Missouri; Herbert S. Hadley, attorney-general of the State of Missouri; C. C. Kelly, and M. P. Belch, prosecuting attorneys of Pettis and Cole Counties, Missouri, and J. F. Parker of Jackson County, Missouri, George West of Henry County, and M. Doherty of Pettis County, Missouri, commanding them and each of them on a day certain therein to be named and under a certain penalty, to be and appear before this honorable court, then and there to answer, but not under oath, such oath being expressly waived, all and singular the premises, and to stand to, perform and abide by such order, direction and decree as may be made against them in the premises.

And your orator will ever pray, etc.

JAMES HAGERMAN,
GEO. P. B. JACKSON,
JOSEPH M. BRYSON,
Solicitors for Complainant.

FRANK HAGERMAN,
Of Counsel.

STATE OF MISSOURI,
City of St. Louis, ss:

I, C. Haile, upon oath say, I am Traffic Manager of the Missouri, Kansas & Texas Railway Company, complainant in above entitled bill, and as such officer have charge of the traffic operations of said company, and of the matters and things mentioned in said bill which I have read. I know the contents thereof, and the same are true of my own knowledge, except as to those matters therein stated upon information and belief, and as to those matters, I believe them to be true.

C. HAILE.

Subscribed and sworn to before me this 10 day of June, 1905.

[SEAL.] LEE W. HAGERMAN,
Notary Public.

My commission expires March 18th, 1908.

31 Afterwards, towit, on the 16th day of June 1905, the following entry was filed and entered of record, to-wit:—

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 2997.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY, Complainant,
vs.
JOHN A. KNOTT, JOSEPH P. RICE and FRANK A. WIGHTMAN, the Board of Railroad and Warehouse Commissioners of the State of Missouri, a Corporation Organized under the Laws of Missouri; Herbert S. Hadley, Attorney General of the State of Missouri; C. C. Kelly and M. P. Belch, Prosecuting Attorneys of Pettis and Cole Counties, Missouri, Respectively; J. F. Parker, George West, and M. Doherty, Defendants.

Restraining Order.

The original bill of complaint having been this June 16, 1905, by the solicitors for complainant duly presented, and the Court being fully advised in the premises, orders and decrees: Complainant's application for temporary injunction herein is set down for hearing at the United States Circuit Court room in Kansas City, Missouri, on June 26, 1905, at 10 o'clock A. M., or as soon thereafter as it is convenient for the court to hear the same.

In the meantime, and until the further order of Court herein, each and all of the above named defendant railroad commissioners their agents, servants and successors, are restrained from taking any steps to put in force the maximum rates mentioned in the act of the legislature of the State of Missouri, approved April 15, 1905, and entitled, "An Act, entitled 'An Act to amend Chapter 12 of the Revised Statutes of Missouri, revision of 1899, entitled "Corporations, private," by repealing section 1194 of said Revised Statutes being part of Article IV of said chapter concerning railroad classification—charges—commissioners, and to enact in lieu thereof the following, new sections providing for the regulation of freight charges by railroads and the recovery of penalties for the violation thereof' "; from requiring complainant to post said maximum rates at any place, or to file same with them; from requiring a
32 schedule thereof to be filed with them; from taking or making out, or printing or delivering any schedule of rates for complainant containing the maximum rates fixed by said act; from instituting any investigation of any complaint that any rate is unreasonable, extortionate or unjust because higher than the maximum rate fixed by said act; from directing the attorney general of the state, or any prosecuting attorney therein to prosecute or assist in prosecuting complainant directly or indirectly for any failure to file a schedule adopting said maximum rates; or for any failure to recognize, adopt or comply with said act.

And in the meantime, and until the further order of Court herein, the above named attorney general and prosecuting Attorneys, their

assistants and successors are restrained from bringing any suit or action against complainant to enforce against it, directly or indirectly any penalty in anywise dependent or based upon the failure of complainant to recognize or abide by the said act of the legislature.

And in the meantime and until further order of Court herein, the defendants John A. Knott, Joseph P. Rice, and Frank A. Wightman, The Board of Railroad and Warehouse Commissioners of the State of Missouri, a corporation organized under the laws of Missouri; Herbert S. Hadley, Attorney General of the State of Missouri; C. C. Kelly, and M. P. Belch, Prosecuting Attorneys of Pettis and Cole Counties, Missouri, respectively; J. F. Parker, George West and M. Doherty, and all other shippers affected by this proceeding, are restrained from instituting any action, or taking any steps to collect any penalties for the alleged violation of said act of 1905.

(Signed) SMITH McPHERSON, *Judge.*

33 Afterwards, to-wit, on the 27th day of June, 1905, the following order continuing Restraining Order was filed and entered of record:—

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 2988.

ST. LOUIS AND SAN FRANCISCO RAILROAD COMPANY, Complainant,

vs.

HERBERT S. HADLEY, Attorney General of the State of Missouri and Joseph P. Rice, John A. Knott and Frank A. Wightman Railroad Commissioners of the State of Missouri, et al., Defendants.

No. 2989.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, Complainant,

vs.

SAME, Defendants.

No. 2990.

THE ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, Complainant,

vs.

SAME, Defendants.

No. 2991.

THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY Complainant,

vs.

SAME, Defendants.

No. 2992.

THE ST. LOUIS, KANSAS CITY AND COLORADO RAILWAY COMPANY Complainant,
VS.
SAME, Defendants.

No. 2993.

34 THE KANSAS CITY SOUTHERN RAILWAY COMPANY, Complainant,
VS.
SAME, Defendants.

No. 2994.

THE ST. LOUIS & HANNIBAL RAILWAY COMPANY, Complainant,
VS.
SAME, Defendants.

No. 2995.

THE MISSOURI PACIFIC RAILWAY COMPANY, Complainant,
VS.
SAME, Defendants.

No. 2996.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY, Complainant,
VS.
SAME, Defendants.

No. 2997.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY, Complainant,
VS.
SAME, Defendants.

No. 2998.

CHICAGO, BURLINGTON & QUINCY RAILWAY COMPANY, Complainant
VS.
SAME, Defendants.

No. 2999.

QUINCY, OMAHA AND KANSAS CITY RAILROAD COMPANY, Complainant,
VS.
SAME, Defendants.

35 No. 3000.

THE WABASH RAILROAD COMPANY, Complainant,
vs.
SAME, Defendants.

No. 3001.

THE ST. JOSEPH & GRAND ISLAND RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

No. 3002.

KANSAS CITY, CLINTON & SPRINGFIELD RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

No. 3003.

CHICAGO GREAT WESTERN RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

No. 3004.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

No. 3006.

THE CHICAGO & ALTON RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

Order.

The application of complainants in above cases for temporary injunction coming on for hearing, this June 27th, 1905, complainants appearing by Frank Hagerman, their solicitor, and the Attorney General in person. At the request of the latter it is ordered that the said application be continued till July 8, 1905, and until further order of court the restraining orders heretofore issued shall
36 continue in force.

(Signed) JNO. F. PHILIPS,
(Signed) SMITH McPHERSON,
Judges.

37 Afterwards, to-wit, on the 8th day of July, 1905, a copy of said Restraining Order was filed. At the end of said copy appears the following:—

Received copy of foregoing restraining order this 21st day of June, 1905, and the undersigned defendants enter their appearances in said case as of the August, 1905, rules.

W. W. KELLY,
Prosecuting Attorney,
Pettis County, Missouri.
M. DOHERTY.
GEO. WEST.
M. P. BELCH,
Pros. Atty. of Cole Co., Mo.

STATE OF MISSOURI,
County of Jackson, ss:

E. E. Ball, of lawful age, on oath says he served a copy of the above order, and a copy of the subsequent order, dated June 27th, 1905, upon J. F. Parker, one of above defendants, by delivering to him a copy of each at Kansas City, Missouri, this July 6th, 1905.

E. E. BALL.

Subscribed and sworn to before me this 6th day of July, 1905. My commission expires August 10, 1907.

[SEAL.] AMY Z. CRUISE,
Notary Public.

38 Afterwards a writ of subpoena was duly issued, served, returned and filed. Said writ with the return of the Marshal thereon is in words and figures as follows, to-wit:—

UNITED STATES OF AMERICA,
Western Division of the
Western District of Missouri, sct:

The President of the United States of America to J. F. Parker, Greeting:

You are hereby commanded to be and appear at Rules, to be held at the office of the Clerk of the Circuit Court of the United States for the Western Division of the Western District of Missouri, on the first Monday of August, next, at Kansas City, then and there to answer the bill of complaint, of Missouri, Kansas & Texas Railway Company, a citizen of the State of Kansas filed against you on the 16th day of June, A. D. 1905; hence fail not.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, the 12th day of July, 1905. Issued at office in Kansas City, in said District, under the seal of said Court, the day and year last aforesaid.

[SEAL.] ADELAIDE UTTER,
Clerk of said Circuit Court.

MEM.—The defendant to enter his appearance in this suit in the Clerk's Office, on or before the day at which the writ is returnable; otherwise the bill may be taken pro confesso.

ADELAIDE UTTER, *Clerk.*

UNITED STATES OF AMERICA,
Western Division of the
Western District of Missouri, sct:

I do hereby certify that I executed this writ by delivering a true copy of same to J. F. Parker, at Kansas City, Jackson County, Missouri, on July 13, 1905.

All done in the Western division of the Western District of Missouri.

E. R. DURHAM, *U. S. Marshal,*
Western District of Missouri,
By J. E. MORRISON, *Deputy.*

Marshal's Fees:

Service at $2.00, $2.00.

39 Afterwards, to-wit, on the 12th day of July, 1905, the following order continuing restraining order was filed and entered of record, to-wit:—

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 2997.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY, Complainant,
vs.
JOSEPH P. RICE, JOHN A. KNOTT and FRANK A. WIGHTMAN, Railroad Commissioners, et al., Defendants.

Order

This cause came on for hearing this 12th day of July, 1905, upon complainant's application for temporary injunction. The complainant, the attorney general and the defendant railroad commissioners appeared by counsel; the other defendants having been notified of the hearing; and the court being fully advised in the premises, orders and adjudges:

1. The restraining order heretofore issued herein shall continue and remain in force as a temporary injunction.

2. The complainant shall, on or before the 25th day of July, 1905, file herein an injunction bond in the sum of Ten Thousand dollars, to be approved by a judge or a clerk of this court, the defendants consenting to accept the individual bond of the complainant, conditioned to pay, in case said injunction be dissolved, all

damages ascertained herein to have been sustained by the defendants or any of them, or any person becoming a defendant herein.

(Signed) JNO. F. PHILIPS, *Judge.*

40 Afterwards, towit, on the 22nd day of July, 1905, the Injunction Bond was approved and filed. Said Injunction Bond is in words and figures as follows, to-wit:—

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. —.

—— ——, Complainant,

vs.

HERBERT S. HADLEY, Attorney General; JOSEPH P. RICE, JOHN A. Knott and Frank A. Wightman, Railroad Commissioners, et al., Defendants.

Injunction Bond.

Know all men by these Presents, That the above complainant is held and firmly bound to above named defendants in the penal sum of Ten Thousand dollars ($10,000) well and truly to be paid in lawful money of the United States, for the payment of which it binds itself, its executors, administrators, successors and assigns.

This bond is made upon these conditions:

Whereas, the Court in above entitled cause made an order on July 12, 1905, granting a temporary injunction,

Now if said obligor pays, in case said injunction be dissolved, all damages ascertained herein to have been sustained by the defendants or any of them, or any person becoming a defendant herein then this obligation to be void; otherwise in force and effect.

Witness the hand and seal of said party this July 13 1905.

[SEAL.] MISSOURI, KANSAS & TEXAS RAILWAY COMPANY,
By JAMES HAGERMAN,
Its General Counsel.

Attest:

B. W. MAGUIRE,
Secretary.

The foregoing bond is approved this 22 day of July, 1905, the appearing defendants waiving the necessity of any surety signing the bond.

ADELAIDE UTTER, *Clerk.*

41 Afterwards, to-wit, on the 7th day of August, A. D. 1905, the joint demurrer of John A. Knott, et al., was filed. Said demurrer is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 2997.

MISSOURI, KANSAS AND TEXAS RAILWAY COMPANY, Complainant,
v.
JOHN A. KNOTT, JOSEPH P. RICE, and FRANK A. WIGHTMAN, The Board of Railroad and Warehouse Commissioners of the State of Missouri, a Corporation Organized under the Laws of Missouri; Herbert S. Hadley, Attorney General of the State of Missouri; C. C. Kelly and M. P. Belch, Prosecuting Attorneys of Pettis and Cole Counties, Missouri, Respectively; J. F. Parker, Geo. West, and M. Doherty, Defendants.

The Joint Demurrer of John A. Knott, Joseph P. Rice, and Frank A. Wightman, Railroad Commissioners of the State of Missouri, Three of the Above-named Defendants, to the Bill of Complaint of the Missouri, Kansas and Texas Railway Company, the Above-named Complainant.

These defendants, respectively, by protestation, not confessing or asknowledging all or any of the matters or things in the said bill of complaint contained to be true, in such manner and form as the same are therein and thereby set forth and alleged, demur to the said bill, and for causes of demurrer, show:

1. That it appears by *by* the complainant's own showing by the said bill, that it is not entitled to the relief prayed by said bill, against these defendants, or either of them.

42 2. That said bill of complaint of the complainant is wholly without equity.

3. That it does not appear from said bill of complaint, that charges for the transportation, between points within this State, of such articles of freight, maximum rates for the transportation of which are not fixed by said Acts of 1905, might not or could not have been established by the complainant, if it had chosen to make any effort to do so, or by said Board of Railroad Commissioners, if it had been permitted by the complainant to do so, at such rates as would have been reasonable and just, both to the complainant and to the public, observance of which and of the provisions of the said Acts of 1905, in the transportation by complainant of its entire intra-state traffic, would, as a whole, have rendered to the complainant a fair and reasonable profit for the service of transporting the same. The complainant has made no effort or attempt to readjust its schedules of freight rates, as a whole, with a view of complying with the requirements of said Acts of 1905, nor has it afforded to said Board of Railroad Commissioners any opportunity, on its part, of making such effort, but, on the contrary, by filing the bill of complaint herein on the day said Acts of 1905 took effect, and obtaining the restraining order herein, before said Board of Railroad Commissioners could, by

any possibility, have taken any action in the direction of establishing freight rate schedules for intra-state traffic, which, considered as a whole, would produce a reasonable compensation to the complainant for its service, has prevented said Board from making any such effort.

Wherefore, and for divers other good causes of demurrer
43 appearing on said bill, these defendants demur thereto, and they pray the judgment of this honorable Court whether they shall be compelled to make further or any answer to the said bill; and they humbly pray to be hence dismissed with their reasonable costs in their behalf sustained.

HERBERT S. HADLEY,
Attorney General;
JOHN KENNISH,
SANFORD B. LADD,
Solicitors for Defendants.

SANFORD B. LADD,
Of Counsel.

I hereby certify that the foregoing demurrer is, in my opinion, well founded in point of law.

SANFORD B. LADD.

44 Afterwards, to-wit, on the 7th day of August, 1905, the demurrer of Herbert S. Hadley, Attorney General, was filed. Said demurrer is in words and figures as follows, to-wit:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 2997.

MISSOURI, KANSAS AND TEXAS RAILWAY COMPANY, Complainant,
v.
JOHN A. KNOTT, JOSEPH P. RICE, and FRANK A. WIGHTMAN, The Board of Railroad and Warehouse Commissioners of the State of Missouri, a Corporation Organized under the Laws of Missouri; Herbert S. Hadley, Attorney General of the State of Missouri; C. C. Kelly and M. P. Belch, Prosecuting Attorneys of Pettis and Cole Counties, Missouri, Respectively; J. F. Parker, Geo. West, and M. Doherty, Defendants.

The Demurrer of Herbert S. Hadley, Attorney General of the State of Missouri, One of the Above-named Defendants, to the Bill of Complaint of the Missouri, Kansas and Texas Railway Company, the Above-named Complainant.

This defendant, by protestation, not confessing or acknowledging all or any of the matters or things in the said bill of complaint contained, to be true, in such manner and form as the same are therein and thereby set forth and alleged, demurs to the said bill, and for cause of demurrer shows:

1. That it appears by the complainant's own showing by the said bill, that it is not entitled to the relief prayed by said bill, or any relief whatever, against this defendant.

2. The said bill of complaint of the complainant is wholly without equity.

3. That it does not appear from said bill of complaint that charges for the transportation, between points within this State, of
45 such articles of freight, maximum rates for the transportation of which are not fixed by said Act of 1905, might not or could not have been established by the complainant, if it had chosen to make any effort to do so, or by said Board of Railroad Commissioners, if it had been permitted by the complainant to do so, at such rates as would have been reasonable and just, both to the complainant and to the public, observance of which and of the provisions of the Act of 1905, in the transportation by complainant of its intra-state traffic, would, as a whole, have rendered to the complainant a fair and reasonable profit for the service of transporting the same. The complainant has made no effort or attempt to readjust its schedules of freight rates, as a whole, with a view of complying with the requirements of said Act of 1905, nor has it afforded to the said Board of Railroad Commissioners any opportunity on its part, of making such effort, but, on the contrary, by filing the bill of complaint herein on the day said act of 1905 took effect, and obtaining the restraining order herein, before said Board of Railroad Commissioners could, by any possibility, have taken any action in the direction of establishing freight rate schedules for intra-state traffic, which, considered as a whole, would produce a reasonable compensation to the complainant for its service, has prevented said Board from making any such effort.

4. That this defendant is not a proper party defendant to the bill of complaint.

Wherefore, and for divers other good causes of demurrer appearing on said bill, this defendant demurs thereto, and he prays the judgment of this Honorable Court whether he shall be compelled to make further answer, or any answer, to the said bill; and he humbly prays to be hence dismissed with his reasonable costs in his behalf sustained.

HERBERT S. HADLEY,
Attorney General;
JOHN KENNISH,
SANFORD B. LADD,
Solicitors for Defendants.

46 SANFORD B. LADD,
Of Counsel.

I hereby certify that the foregoing demurrer is, in my opinion, well founded in point of law.

SANFORD B. LADD,
Of Counsel for Defendant.

47 Afterwards, towit, on the 7th day of August, 1905, the demurrer of C. C. Kelly was filed.

Said demurrer is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 2997.

MISSOURI, KANSAS AND TEXAS RAILWAY COMPANY, Complainant,
vs.
JOHN A. KNOTT, JOSEPH P. RICE, and FRANK A. WIGHTMAN, the Board of Railroad and Warehouse Commissioners of the State of Missouri, a Corporation Organized Under the Laws of Missouri; Herbert S. Hadley, Attorney General of the State of Missouri; C. C. Kelly and M. P. Belch, Prosecuting Attorneys of Pettis and Cole Counties, Missouri, Respectively; J. F. Parker, Geo. West, and M. Doherty, Defendants.

The Demurrer of C. C. Kelly, Prosecuting Attorney of Pettis County, Missouri, One of the Above-named Defendants, to the Bill of Complaint of the Missouri, Kansas and Texas Railway Company, the Above-named Complainant.

This defendant, by protestation, not confessing or acknowledging all or any of the matters or things in the said bill of complaint contained, to be true, in such manner and form as the same are therein and thereby set forth and alleged, demurs to the said bill, and for causes of demurrer shows:

1. That it appears by the complainant's own showing by the said bill, that it is not entitled to the relief prayed by said bill, or any relief whatever, against this defendant.

2. That said bill of complaint of the complainant is wholly without equity.

48 3. That this defendant is not a proper party defendant to the bill of complaint.

Wherefore, and for divers other good causes of demurrer appearing on said bill, this defendant demurs thereto, and he prays the judgment of this honorable Court whether he shall be compelled to make further or any answer to the said bill; and he humbly prays to be hence dismissed with his reasonable costs in his behalf sustained.

HERBERT S. HADLEY,
Attorney General;
JOHN KENNISH,
SANFORD B. LADD,
Solicitors for Defendant.

SANFORD B. LADD,
Of Counsel.

I hereby certify that the foregoing demurrer is, in my opinion, well founded in point of law.

SANFORD B. LADD,
Of Counsel for Defendant.

49 Afterwards, towit, on the 7th day of August, 1905, the demurrer of M. P. Belch was filed.

Said demurrer is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 2997.

MISSOURI, KANSAS AND TEXAS RAILWAY COMPANY, Complainant,

vs.

JOHN A. KNOTT, JOSEPH P. RICE, and FRANK A. WIGHTMAN, The Board of Railroad and Warehouse Commissioners of the State of Missouri, a Corporation Organized Under the Laws of Missouri; Herbert S. Hadley, Attorney General of the State of Missouri; C. C. Kelly and M. P. Belch, Prosecuting Attorneys of Pettis and Cole Counties, Missouri, Respectively; J. F. Parker, Geo. West, and M. Doherty, Defendants.

The Demurrer of M. P. Belch, Prosecuting Attorney of Cole County, Missouri, One of the Above-named Defendants, to the Bill of Complaint of the Missouri, Kansas and Texas Railway Company, the Above-named Complainant.

This defendant, by protestation, not confessing or acknowledging all or any of the matters or things in the said bill of complaint contained, to be true, in such manner and form as the same are therein and thereby set forth and alleged, demurs to the said bill, and for causes of demurrer shows:

1. That it appears by the complainant's own showing by the said bill, that it is not entitled to the relief prayed by said bill, or any relief whatever, against this defendant.

2. That said bill of complaint of the complainant is wholly without equity.

50 3. That this defendant is not a proper party defendant to the bill of complaint.

Wherefore, and for divers other good causes of demurrer appearing on said bill, this defendant demurs thereto, and he prays the judgment of this honorable Court whether he shall be compelled to make further or any answer to the said bill; and he humbly prays to be hence dismissed with his reasonable costs in his behalf sustained.

HERBERT S. HADLEY,
Attorney General;
JOHN KENNISH,
SANFORD B. LADD,
Solicitors for Defendant.

SANFORD B. LADD,
Of Counsel.

I hereby certify that the foregoing demurrer is, in my opinion, well founded in point of law.

SANFORD B. LADD,
Of Counsel for Defendant.

51 Afterwards, to-wit, on the 14th day of October, 1905, a waiver of affidavits to demurrers was filed. Said waiver of affidavits is in words and figures as follows, to-wit:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. —.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY, Complainant,
vs.
JOHN A. KNOTT et al., Defendants.

The affidavits of the defendants to the several demurrers this day filed herein to the Bill of Complaint, are hereby waived.
Kansas City, Mo., August 7, 1905.

FRANK HAGERMAN,
Solicitors for Complainant.

52 Afterwards, to-wit, on the 14th day of October, 1905, the following order was filed and entered of record:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 2997.

MISSOURI, KANSAS & TEXAS R'Y CO., Complainant,
vs.
JOHN A. KNOTT et al., Defendants.

Order.

This cause coming on for hearing this October 14, 1905, upon each and all of the demurrers heretofore filed by defendants herein, the complainant appeared by Frank Hagerman, its solicitor, and said demurring defendants by Sanford B. Ladd, their solicitor, and the court being fully advised in the premises, overrules each and all of the said demurrers, and at the request of the said solicitor, of said defendants they are given until the November, 1905, Rules in which to file answers.

(Signed) SMITH McPHERSON, *Judge.*

Afterwards, towit on the 28th day of November A. D. 1905, the joint answer of John A. Knott, et al., was filed.
Said answer is in words and figures as follows:

53 In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 2997.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY, Complainant,
vs.
JOHN A. KNOTT, JOSEPH P. RICE, and FRANK A. WIGHTMAN, the Board of Railroad and Warehouse Commissioners of the State of Missouri, a Corporation Organized under the Laws of Missouri; Herbert S. Hadley, Attorney-General of the State of Missouri; C. C. Kelly and M. P. Belch, Prosecuting Attorneys of Pettis and Cole Counties, Missouri, Respectively; J. F. Parker, Geo. West, and M. Doherty, Defendants.

The Joint and Several Answer of John A. Knott, Joseph P. Rice, and Frank A. Wightman, Three of the Defendants, to the Bill of Complaint of the Missouri, Kansas & Texas Railway Company, Complainant.

These defendants respectively now and at all times hereafter saving to themselves all and all manner of benefit of exception or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in the said bill contained, for answer thereto, or to so much thereof as these defendants are advised it is material or necessary for them to make answer to, answering, say:

I.

They admit the averments of paragraph numbered I of the complainant's bill of complaint, except in the following particulars:

54 They have no knowledge, information or belief as to the ownership or operation by the complainant of the different lines of railway mentioned in said paragraph, or as to the mileage of each line, or as to whether there are operated in harmony with, or as a part of what is known as the Missouri, Kansas & Texas Railway System, any line or lines of railroad in the state of Texas or in the State of Louisiana; nor have they any knowledge, information or belief as to whether the stock of the Missouri, Kansas & Texas Railway Company, of Texas, or any of it, is held by any trustee in any mortgage of the complainant, or for the benefit of the complainant's first and second mortgage bondholders and stockholders, or whether any dividends have ever been earned or paid on the stock of the said Missouri, Kansas & Texas Railway Company, of Texas.

These defendants have no knowledge, information or belief as to whether the complainant borrowed any money to aid or assist it in the construction, acquisition or maintenance of any of said lines of railway, or whether it executed any of the mortgages, or whether, to secure the payment thereof, it executed any of the mortgages described in said paragraph I of the bill of complaint.

These defendants have no knowledge, information or belief as to whether the complainant purchased or acquired any of the lines of railway mentioned in said paragraph I of said bill of complaint, in the manner stated therein, or in any other manner, or whether such purchase or acquisition in any case, was subject to the mortgages on the property, or any of them therein mentioned, or assumed or agreed to pay the bonds issued under any of them.

These defendants have no knowledge, information or belief as to the number, character, date or amount of the bonds averred in the bill of complaint to be issued and outstanding under said mortgages, or as to the correctness, in any particular, of the
55 statement thereof, contained in said paragraph I; or whether the complainant is liable for the payment of the principal or interest of any of the bonds of the Missouri, Kansas & Texas Railway Company, of Texas, the Dallas & Waco Railway Company, or the Sherman, Shreveport & Southern Railway Company, as a consequence of guaranteeing the same or otherwise; or whether said two last-named companies, or either of them, have been merged into the Missouri, Kansas & Texas Railway Company, of Texas; or whether the complainant is liable, as guarantor, or otherwise, for one million dollars of bonds, principal and interest, of the Boonville Railroad Bridge Company, or whether the complainant is the lessee of said bridge, or the same forms a part of the complainant's railroad in the State of Missouri.

These defendants have no knowledge, information or belief as to the amount of assets or liabilities of the complainant, at the end of the fiscal year ending June 30th, 1904, or whether they are correctly set forth in the complainant's general balance sheet or in said paragraph I; or whether the statement of assets and liabilities contained in said paragraph I shows the financial condition of the complainant; or whether the statement of the complainant's annual fixed charges, contained in said paragraph I, is correct in whole or in detail, in any part thereof.

II.

These defendants admit that this cause arises under the Constitution and laws of the United States; but they deny that said Act of 1905 is unconstitutional or violative of the provisions of the Constitution of the United States or of the Fourteenth Amendment thereto, or contrary to the laws of the United States. They admit that the matter and amount in dispute exceeds, exclusive of interest and costs, the sum or value of Two Thousand Dollars ($2,000).

56

III.

These defendants admit that they constitute the Board of Railroad Commissioners of the State of Missouri, and that the defendant Herbert S. Hadley is the Attorney-General of the State of Missouri, and that the defendants C. C. Kelley and M. P. Belch are respectively prosecuting attorneys of Pettis and Cole counties, Missouri; but they deny that either they or the said defendants Hadley, Kelley and Belch, or either of them, are required by law to do or perform

the special duties mentioned in said bill of complaint, except as is in this answer hereinafter admitted and stated.

IV.

They admit that the other defendants are citizens and residents respectively of the State of Missouri, and of the counties of said State mentioned in paragraph IV of said bill of complaint; but whether each or any of them are engaged in shipping over the complainant's road or other roads in the State of Missouri, any of the commodities mentioned in the Act of 1905, or whether they represent any class of shippers, these defendants have no knowledge, information or belief.

V.

They admit that paragraph V of the complainant's bill of complaint, correctly sets out Sections 1191, 1192 and 1193 of the Revised Statutes of Missouri, of 1899, and that Section 1194 of said Revised Statutes fixed the maximum rates for the classes of freight designated in said Section 1193, as Classes D, E, F, G, H, I and J, respectively. They admit that the statutes of the State provide for the election and qualification of Railroad Commissioners, and prescribe their special duties, and as to the allegations in para-
57 graph V of said bill of complaint, regarding the special duties imposed upon them and the Attorney-General and prosecuting attorneys, by the statutes of the State, they aver that Articles II and IV of Chapter 12 of the Revised Statutes of Missouri, of 1899, and an Act of the General Assembly of the State of Missouri, entitled, "An Act to amend Chapter 12 of the Revised Statutes of the State of Missouri, of 1899, entitled "Corporations, private,' by adding two new sections after Section 1194, to be known as Sections 1194*a* and 1194*b*, providing that the Board of Railroad and Warehouse Commissioners shall fix, maintain, establish, reduce and modify freight rates upon all railroads in this State, and providing for the manner of so doing and enforcing the same," approved April 6, 1903, published in the "Laws of Missouri, passed at the Session of the Forty-second General Assembly," at page 132, of which said statutes and Act, this Court will take judicial notice, prescribe particularly all the duties imposed by law upon these defendants, constituting the Board of Railroad Commissioners, and the Attorney-General and prosecuting attorneys, respecting freight rates and the enforcement of any laws of this State governing or affecting the same; and they beg leave to refer to said statutes and said Act, and that the same may be considered in connection with this answer with like effect as if they had been fully set out herein.

VI.

These defendants admit the passage, by the Legislature of the State of Missouri, of the Act approved April 6, 1903, and that said Act is correctly set out in paragraph VI of said bill of complaint.

VII.

These defendants admit the passage by the Legislature of
58 the State of Missouri, of the Acts approved April 15, 1905, and April 14, 1905, and that said Acts are correctly set out in paragraph VII of said bill of complaint. They admit that said Acts took effect on the 16th day of June, 1905; that the rates at the time of the filing of said bill of complaint being charged by the complainant for the transportation of freight of the character mentioned in said last-named Acts, were shown in schedules on file with the Railroad Commissioners; but these defendants deny that said rates so charged by complainant were, as respects all the freight of the character mentioned in said Acts, in excess of the maximum rates fixed by said Act of 1905. They admit that as to some of the commodities mentioned in said Acts, the same would require some reduction in the rates charged by the complainant for the transportation thereof at the time of the filing of said bill of complaint, and that such reduction would make necessary a change in the schedules so filed by the complainant with the Railroad Commissioners; but these defendants deny that such change could not and cannot be made by the complainant without jeopardizing its property interests. These defendants deny that they had at or before the filing of said bill of complaint, threatened to enforce the provisions of said Acts of 1905, by entering upon investigations, either upon the instigation of the Board of Railroad Commissioners or on the complaint of shippers or by determining or adjudging complainant's then-existing schedule of rates to be unreasonable, unjust or extortionate, or by requiring the complainant, under pain of any penalties, to file or publish a new schedule, fixing rates not in excess of those mentioned in said Acts of 1905, and they deny that they proposed to do any of said things. They deny that they proposed to file, post or publish as the complainant's schedule, the maximum rates fixed in said Acts of 1905, if the complainant should refuse to do so, or to direct any prosecuting attorney to prosecute or recover of complainant any penalties, or to direct the Attorney General to assist in any such
59 prosecution, or recover any penalties for the complainant's failure to comply with the orders which they proposed from time to time to make in investigations instituted for the enforcement of said Acts of 1905. They deny that at that time they proposed to make any such investigations. On the contrary, these defendants aver that when this suit was begun the time had not arrived at which these defendants could take any action whatever under or in pursuance of said Acts of 1905, and that they were not at that time proposing, because the time had not (been) then arrived when they, as such Board of Railroad Commissioners, could properly or lawfully propose any action in the premises. They had not, as a Board, determined or considered the course proper to be pursued by them in respect of the matter when said Acts of 1905, should have taken effect. They deny that any prosecuting attorney or the Attorney General would have conducted such prosecutions or sought to recover any such penalties.

As to whether shippers along the line of the complainant's railroad were then and are now numerous, or engaged daily or at all in making or receiving shipments to or from points in the State of Missouri of any freight of the special classes designated in said Acts of 1905, these defendants have no knowledge, information or belief. They deny that by any such shippers or shipper there would have been or will be instituted suits to recover of the complainant any damages or attorneys' fees for charging rates higher than those fixed by said Acts of 1905.

Whether any other shippers in the counties in the State where the complainant's line of road extends, are interested with those named as defendants herein, these defendants have no knowledge, information or belief; but they deny that any shipper or other person not named as a defendant in this action can or will be bound by any decree which may be entered herein.

VIII.

These defendants deny that said Acts of 1905 are invalid
60 or inoperative or of no force or effect for any of the reasons mentioned in paragraph VIII of the complainant's said bill of complaint. They deny that said Acts fix rates confiscatory in their nature or unreasonable in amount, or insufficient to permit the complainant to operate its property in Missouri, without loss, or make it impossible for freight to be carried by the complainant between points in Missouri, at any profit. They deny that all or any part of said Acts is contrary to or violative of the provisions of the Constitution of the United States, or of the Fourteenth Amendment thereto. They deny that said Acts are invalid, as alleged in paragraphs I, XI and XIII of said bill of complaint, or that it is violative of said Fourteenth Amendment to the Constitution of the United States. They deny that the provisions of said Act of April 15th, 1905, that in computing the rate of freight, the distance shall be computed from the point where it is received to the point of destination in the State, notwithstanding it may pass from one road to another, impairs the complainant's freedom of contract or fixes a rate for it based upon carriage over the line of another road, or that thereby any provision of the federal constitution or any amendment thereto is violated, or that the freedom of contract guaranteed by Section 4 of article 2 of the State Constitution is denied. They deny that said Section 1194*a* is a discrimination between individuals and companies, or denies to the complainant the equal protection of the law guaranteed to it by the Fourteenth Amendment to the Constitution of the United States.

These defendants further aver that even if said Section 1194*a* did operate to discriminate against the complainant, it might be stricken out and Section 1194 would remain a valid and complete enactment, capable of enforcement. They aver that the effect of said Section 1194*a* is not to discriminate against the complainant,
and that at the time of the taking effect of said Act of 1905,
61 there was not and is not now any railroad or part of railroad in the State of Missouri, which is not owned and oper-

ated by a railroad company. They deny that said law as it now stands is uncertain, as averred in subdivision (*e*) of paragraph VIII of the complainant's bill of complaint, for the reason stated therein, or for any other reason, or that said Act of 1905 is invalid because of any reason stated in said subdivision (*e*).

IX.

These defendants have no knowledge, information or belief as to the number of miles of railroad embraced in the entire system of the complainant, or whether the whole of it, or that portion of it in Missouri, was constructed and fairly acquired at a fair and reasonable cost, or whether any of complainant's railroads were judiciously located, or have at any time been properly or economically operated; or whether its capitalization in bonds and stocks, aggregates the amount per mile stated in paragraph IX of the bill of complaint, or whether such capitalization is fair or reasonable; or whether its fixed charges are reasonable; or whether the complainant's lines in Missouri secure and receive a due, fair and reasonable proportionate benefit of the entire system, or the value of the property in Missouri, or its capacity for serving the public, is proportionately increased or augmented thereby; or whether the cost of constructing or replacing its railroad in Missouri, and providing and furnishing its equipment and terminals, or constructing and replacing its entire system to-day would exceed its original cost, these defendants have no knowledge, information or belief; nor have they any knowledge, information or belief whether the complainant has or has not been able in the past to have any returns in the way of dividends on its preferred or common stock; or whether the complainant's property was operated as a part of a whole system, or whether the rates at which it was operated were higher or lower.

62 They deny that the rates or any of them fixed in said Acts of 1905, are unjust, unfair, confiscatory or unreasonable.

X.

These defendants admit that the rates, at the time of the filing of said bill of complaint and now, charged by the complainant for State shipments on some of the classes of freight mentioned in said Act of 1905, were and are, in some cases, in excess of the maximum therein fixed, but they are informed and believe that as to some of the commodities mentioned in said Act, the rates so charged by the complainant were and are less than the maximum rates fixed by said Act. They deny that if charges for the classes of freight mentioned in said Act of 1905 should be made by the complainant at the maximum rates fixed in said Act, the complainant would be required to do such business without profit or at any loss, or without return upon its investment in this State. They deny that the rates fixed in said Act are unjust or unreasonably low or confiscatory in their nature, or that they will not make a return upon the investment in the property of complainant in this State, or that the

gross receipts of all the State business which the complainant does, can or will do in Missouri, when charging the maximum rates fixed by the Act of 1905, for the classes of freight therein mentioned, will not be sufficient to pay the operating expenses and the cost of doing such business in the State, or that there will not be left any sum as profit or return upon the value of the property of the complainant devoted to the use of such business in this State.

They deny that the maximum rates for any class of freight mentioned in said Act of 1905, are not sufficient to pay the cost of the carriage thereof.

XI.

63 These defendants have no knowledge, information or belief as to the amount of the total earnings of the complainant from local or State freight business in Missouri for the last three years or any one of them, or whether they were or were not in excess of the amounts stated in paragraph XI of complainant's bill of complaint. They deny that the expense of doing such local and State business for said three years or for any one of them, was in excess of the complainant's earnings therefrom in the amounts mentioned in the said bill of complaint, or of any amount whatever.

These defendants have no knowledge, information or belief as to whether any reduction in rates under said Acts of 1905, will not increase the local traffic, or whether the volume of State and local business will not be more in 1905 than it was in 1904, or as to whether the expense of doing such business will be as great, or whether, if such business should increase, there would be a proportionate increase in such expense. These defendants have no knowledge, information or belief as to whether the value of that part of the complainant's property in Missouri, used in doing State and local business, is not less than $8,607,594.37, or what is the value of such part of the complainant's property.

These defendants deny that if the complainant for the classes of freight mentioned in said Acts of 1905, should charge the maximum rates therein fixed, its total gross receipts from local or State traffic in Missouri, would be reduced, in any sum whatever, per annum. Whether the expense of doing business, in such case, will or will not be lessened, these defendants have no knowledge, information or belief.

They deny that any reduction of rates, attempted by said Acts of 1905, is unfair or unjust, or that they fail to give a fair return on the investment in the complainant's property, or that the enforce-
64 ment of said Acts will compel the complainant to do its local and State business in such a way as not to permit it to make a fair and reasonable profit thereon.

XII.

These defendants admit that the companies mentioned in paragraph XII of the complainant's bill of complaint carry the classes of freight mentioned in said Acts, and that they claim that the maximum rates thereby fixed are confiscatory in their nature, and if

charged, would result in their doing their State business without any profit. But these defendants deny that such claim is, in point of fact, true.

These defendants deny that the maximum rates fixed by said Acts of 1905, are unreasonably low as against any of said companies or that they will not permit any of them to make a profit upon their State business, or that for that reason said Acts are invalid as against said companies.

They deny that said Acts, if held valid as to complainant, are unconstitutional because of any alleged discrimination between the complainant and any other persons or corporations operating railroads in this State. They aver that the only discrimination of which the complainant will be allowed to complain, is a discrimination against itself in favor of some other person or corporation; and they deny that any of the provisions of the Constitution of the United States or of any of the amendments thereto, are in any respect violated by said Acts.

XIII.

Further answering and with special reference to the averments of paragraph XIII of the complainant's bill of complaint, these defendants deny that said Acts of 1905 fix and establish maximum rates which are unjust, or unreasonable or unconstitutional,
65 for any reason.

These defendants have no knowledge, information or belief as to whether the cost of transporting live stock is greater than that of any of the other commodities mentioned in said Acts; or whether the same reduces the rate on said live stock on an average of 29.6 per cent., or whether the reduction in rates on salt and cement is only 22 per cent., or in the case of lumber, lath and shingles, 17.8 per cent. They have no knowledge, information or belief as to whether the different articles transported on complainant's railway have been arranged in classes, according to cost, of carriage, price, risk of injury, bulk, volume of traffic, or any other circumstances, or have remained in substantially the same classes for any period of time, or whether the same has been recognized, approved or enacted into law by any statutory classification in effect in Missouri.

They deny that any reduction in rates upon articles affected by the said Act of 1905, is unequal, or partial, or arbitrary as compared with any other commodities or as between the commodities included in said Act. Or that the same works any injustice between shippers, purchasers or manufacturers of the State of Missouri, or deprives them of their property without due process of law or deprives them of the equal protection of the laws, or operates to deprive the complainant of its property without due process of law, or deprives the complainant of the equal protection of the laws by any of the methods or for any of the reasons mentioned in said paragraph XIII of the bill of complaint. They deny that the legislature had or has established maximum rates of charges for the transportation of all kinds of property or that even if the legislature had done so, any change effected in such rates by said Act of 1905, is presumably un-

fair or unreasonable in any respect. They deny that the legislature requires the complainant to discriminate in favor of any
66 persons or shippers, or to give them a right of transportation for a less rate than the general rate heretofore fixed by any law; or that such rate is less than is just and reasonable in view of the cost to the carrier and the value of the services rendered to the shipper.

XIV.

These defendants, further answering, say that they are informed and believe that this complainant and seventeen other railroad companies or corporations, owning and operating lines of railroad in the State of Missouri, immediately after the approval of said Act of 1905, agreed and came to an understanding with each other, that none of them would comply with the provisions thereof, or transport the commodities named in said Act at the rates mentioned therein, or make any effort to revise their schedules of rates for transporting the commodities mentioned in said Act and other commodities transported by them, in such a manner as to yield obedience to said Act and at the same time derive a reasonable profit upon the fair valuation of their property necessary to carry on their intra-State business, but determined, on concerted action among themselves, to disobey said Act, to deny its validity and any obligation on their part to comply with it, and to bring suits, each of them for itself, on the day said Act should take effect, to enjoin the officers of the State from taking any action or discharging any duties which might be imposed upon them by law in respect of said Act, and for the further purpose of obtaining a decree of this court adjudging said Act to be null and void upon the grounds stated in this complainant's bill of complaint.

These defendants further aver that in pursuance of saidagreement and understanding, this complainant and the said seventeen other companies or corporations did, on the 16th day of June,1905, each for itself, file in this court its bill of complaint, all of them
67 being upon substantially the same grounds as those stated in this complainant's bill of complaint praying for substantially the same relief, and did, on the same day, in each of said suits, obtain from this court a restraining order, directed to and which was served upon these defendants and the Attorney-General of the State of Missouri, and certain persons designated in said bills of complaint as shippers, enjoining these defendants and the Attorney-General from performing any of the duties imposed upon them as State officials, by law, looking to the enforcement of the provisions of said Act, (for the express terms of which said order these defendants pray leave to refer to the same as it appears in the record of this cause,) and afterwards, while said restraining order was in force, did obtain from this court a preliminary injunction in the terms of said order, which said preliminary injunction is still operative.

These defendants say that they are informed and believe that the rates fixed by said Act of 1905, do not affect all the articles of freight transported by the complainant in its intra-State traffic, but that a

very large number of articles, and a very large part of its intra-State traffic remain wholly unaffected and unregulated as to rates, by said Act or by any other existing statute. And these defendants say that the question of whether rates are compensatory or otherwise, can only be determined upon a consideration of a schedule of rates which shall embrace every article and all the freight transported by the complainant in carrying on its intra-State business.

These defendants are informed and believe that the complainant, if it had chosen to do so, instead of attacking the reasonableness or fairness of the rates upon the few articles mentioned in the Act of 1905, might have revised its schedule or tariff of rates upon all the articles of freight transported by it in carrying on its intra-state traffic, including those mentioned in said Act of 1905, in such a manner that the rates for carrying the articles not mentioned in
68 said Act, would have been not unreasonable or unjust, either to itself or to the public, and that the income derived by the complainant for performing the service of transporting freight at the rates and charges fixed in such a schedule, would have been sufficient to assure to the complainant a fair and reasonable return upon the fair value of its property necessarily employed in the carrying on of such intra-State business.

These defendants further aver that the complainant afforded to these defendants, as a Board of Railroad Commissioners, no opportunity, after said Act of 1905 took effect, to revise, adjust and fix a schedule of rates upon all the articles of freight transported by the complainant in its intra-State traffic, including those mentioned in said Act of 1905, in such a manner that the provisions of said Act of 1905 would be observed, and at the same time the rates upon all other articles not mentioned in said Act, should be not unreasonable or unjust, either to the complainant or to the public.

These defendants further say that if the complainant had failed to so revise or to attempt to so revise its schedules, these defendants, as such Board, would, if they had been given the opportunity, which was denied to them by the injunction in this cause, in the discharge of the duties imposed on them by law, have attempted to fix and establish such a schedule of rates upon all the articles of freight transported by the complainant in its intra-State traffic, as would have observed or complied with the provisions of said Act of 1905, and in other respects have been not unjust or unfair either to the complainant or to the public, and they believe that they could have done so.

These defendants further say that by the issue of the restraining order and the preliminary injunction in this cause, they have
69 been prevented from fixing any such schedule or attempting to fix a schedule of rates which should be just to the complainant and to the shippers; that the complainant, by the filing of its bill before these defendants, as such Board, could lawfully act in the premises, has unwarrantably assumed that these defendants, as such Board, would fix and establish a schedule of rates which would be unjust to the complainant.

These defendants say that in view of the statutes of this State,

which define the duties to be discharged by them, as such Board, this action ought not to be maintained, because it was brought before these defendants had any opportunity to discharge any of such duties or act in the matter of a general revision of the schedule of rates, made necessary by said Act of 1905.

These defendants deny that the complainant is entitled to any relief whatever against these defendants, without this, that any other matter, cause or thing in the complainant's said bill of complaint, or amendments thereto, contained, material or necessary for these defendants to make answer unto, and not herein or hereby well and sufficiently answered, confessed, traversed and avoided, or denied, is true to the knowledge or belief of these defendants; all which matters and things these defendants are ready and willing to aver, maintain and prove, as this honorable court shall direct, and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

HERBERT S. HADLEY,
Attorney General;
JOHN KENNISH,
Assistant Attorney General,
Solicitors for Defendants.

SANFORD B. LADD,
Of Counsel.

70 Afterwards, to-wit, on the 1st day of December, 1905, the Answer of Herbert S. Hadley, Attorney General, was filed. Said Answer is in words and figures as follows, to-wit:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 2997.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY, Complainant,
vs.
JOHN A. KNOTT, JOSEPH P. RICE, and FRANK A. WIGHTMAN, the Board of Railroad and Warehouse Commissioners of the State of Missouri, a Corporation Organized under the Laws of Missouri; Herbert S. Hadley, Attorney General of the State of Missouri; C. C. Kelly and M. P. Belch, Prosecuting Attorneys of Pettis and Cole Counties, Missouri, Respectively; J. F. Parker, Geo. West, and M. Doherty, Defendants.

The Answer of Herbert S. Hadley, Attorney General of the State of Missouri, One of the Defendants, to the Bill of Complaint of the Missouri, Kansas & Texas Railway Company, Complainant.

This defendant now and at all times hereafter saving to himself all and all manner of benefit of exception or otherwise that can or may be had or taken to the many errors, uncertainties and im-

perfections in the said bill contained, for answer thereto, or to so much thereof as this defendant is advised it is material or necessary for him to make answer to, answering says:

I.

He admits the averments of paragrpah numbered I of the complainant's bill of complaint, except in the following particulars:

He has no knowledge, information or belief as to the ownership or operation by the complainant of the different lines of railway mentioned in said paragraph, or as to the mileage of each line, or as to whether there are operated in harmony with,
71 or as a part of what is known as the Missouri, Kansas & Texas Railway System, any line or lines of railroad in the State of Texas or in the State of Louisiana; nor has he any knowledge, information or belief as to whether the stock of the Missouri, Kansas & Texas Railway Company, of Texas, or any of it, is held by any trustee in any mortgage of the complainant, or for the benefit of the complainant's first and second mortgage bondholders and stockholders, or whether any dividends have ever been earned or paid on the stock of the said Missouri, Kansas & Texas Railway Company, of Texas.

This defendant has no knowledge, information or belief as to whether the complainant borrowed any money to aid or assist it in the construction, acquisition or maintenance of any of said lines of railway, or whether it executed any of the mortgages, or whether, to secure the payment thereof, it executed any of the mortgages described in said paragraph I of the bill of complaint.

This defendant has no knowledge, information or belief as to whether the complainant purchased or acquired any of the lines of railway mentioned in said paragraph I of said bill of complaint, in the manner stated therein, or in any other manner, or whether such purchase or acquisition in any case was subject to the mortgages on the property, or any of them, therein mentioned or assumed or agreed to pay the bonds issued under any of them.

This defendant has no knowledge, information or belief as to the number, character, date or amount of the bonds averred in the bill of complaint to be issued and outstanding under said mortgages, or as to the correctness, in any particular, of the statement thereof, contained in said paragraph I; or whether the complainant is liable for the payment of the principal or interest of any of the bonds of the Missouri, Kansas & Texas Railway Company of Texas, the Dallas & Waco Railway Company, or the Sherman, Shreveport & Southern Railway Company, as a consequence of guaranteeing the same or otherwise; or whether said two last-named com-
72 panies, or either of them, have been merged into the Missouri, Kansas & Texas Railway Company, of Texas; or whether the complainant is liable, as guarantor, or otherwise, for one million dollars of bonds, principal and interest, of the Boonville Railroad Bridge Company, or whether the complainant is the lessee of said bridge, or the same forms a part of the complainant's railroad in the State of Missouri.

This defendant has no knowledge, information or belief as to the amount of assets or liabilities of the complainant, at the end of the fiscal year ending June 30th, 1904, or whether they are correctly set forth in the complainant's general balance sheet or in said paragraph I; or whether the statement of assets and liabilities contained in said paragraph I shows the financial condition of the complainant; or whether the statement of the complainant's annual fixed charges, contained in said paragraph I, is correct in whole or in detail, in any part thereof.

II.

This defendant admits that this cause arises under the Constitution and laws of the United States; but he denies that said Act of 1905 is unconstitutional or violative of the provisions of the Constitution of the United States or of the Fourteenth Amendment thereto, or contrary to the laws of the United States. He admits that the matter and amount in dispute exceeds, exclusive of interest and costs, the sum or value of Two Thousand Dollars ($2,000.).

III.

This defendant admits that the defendants John A. Knott, Joseph P. Rice and Frank A. Wightman constitute the Board of Railroad Commissioners of the State of Missouri, and that this defendant is the Attorney General of the State of Missouri, and that the defendants C. C. Kelly and M. P. Belch are respectively prosecuting attorneys of Pettis and Cole Counties, Missouri; but he denies that either they or this defendant, or defendants Kelly and Belch, or either of them, are required by law to do or per-
73 form the special duties mentioned in said bill of complaint, except as is in this answer hereinafter admitted and stated.

IV.

He admits that the other defendants are citizens and residents respectively of the State of Missouri, and of the Counties of said State mentioned in paragraph IV of said bill of complaint; but whether each or any of them are engaged in shipping over the complainant's road or other roads in the State of Missouri, any of the commodities mentioned in the Act of 1905, or whether they represent any class of shippers, this defendant has no knowledge, information or belief.

V.

He admits that paragraph V of the complainant's bill of complaint correctly sets out Sections 1191, 1192, and 1193 of the Revised Statutes of Missouri, of 1899, and that Section 1194 of said Revised Statutes fixed the maximum rates for the classes of freight designated in said Section 1193, as Classes D, E, F, G, H, I, and J, respectively. He admits that the statutes of the state provide for the election and qualification of Railroad Commissioners, and prescribe their special duties, and as to the allegations in paragraph V

of said bill of complaint, regarding the special duties imposed upon them and the Attorney General and prosecuting attorneys, by the statutes of the state, he avers that Article II and IV of Chapter 12 of the Revised Statutes of Missouri, of 1899, and an Act of the General Assembly of the State of Missouri, entitled, "An act to amend Chapter 12 of the Revised Statutes of the State of Missouri, of 1899, entitled 'Corporations, private,' by adding two new sections after Section 1194 to be known as Sections 1194*a* and 1194*b*, providing that the Board of Railroad and Warehouse Commissioners shall fix, maintain, establish, reduce and modify freight rates upon all railroads in this State, and providing for the manner of so doing and enforcing the same," approved April 6, 1903, published
74 in the "Laws of Missouri, passed at the Session of the Forty-second General Assembly," at page 132 of which said statutes and Act this Court will take judicial notice, prescribe particulaly all the duties imposed by law upon those defendants, constituting the Board of Railroad Commissioners, and the Attorney General and prosecuting attorneys, respecting freight rates and the enforcement of any laws of this state governing or affecting the same; and he prays leave to refer to said statutes and said Act, and that the same may be considered in connection with this answer with like effect as if they had been fully set out herein.

VI.

This defendant admits the passage, by the Legislature of the State of Missouri, of the Act approved April 6, 1903, and that said Act is correctly set out in paragraph VI of said bill of complaint.

VII.

This defendant admits the passage, by the Legislature of the State of Missouri, of the Acts approved April 15, 1905, and April 14, 1905, and that said Acts are correctly set out in paragraph VII of said bill of complaint. He admits that said Acts took effect on the 16th day of June, 1905; that the rates at the time of the filing of said bill of complaint being charged by the complainant for the transportation of freight of the character mentioned in said last-named Acts, were shown in schedules on file with the Railroad Commissioners; but this defendant denies that said rates so charged by complainant were, as respects all the freight of the character mentioned in said Acts, in excess of the maximum rates fixed by said Act of 1905. He admits that as to some of the commodities mentioned in said Acts the same would require some reduction in the rates charged by the complainant for the transportation thereof at the time of the filing of said bill of complaint, and that such reduction would make necessary a change in the schedules so
75 filed by the complainant with the Railroad Commissioners; but this defendant denies that such change could not and cannot be made by the complainant without jeopardizing its property interests. This defendant denies that the Railroad Commissioners had, at or before the filing of said bill of complaint,

threatened to enforce the provisions of said Acts of 1905 by entering upon investigations, either upon the instigation of the Board of Railroad Commissioners or on the complaint of shippers or by determining or adjudging complainant's then existing schedule of rates to be unreasonable, unjust or extortionate, or by requiring the complainant, under pain of any penalties, to file or publish a new schedule, fixing rates not in excess of those mentioned in said acts of 1905, and he denies that they proposed to do any of said things. He denies that they proposed to file, post or publish as the complainant's schedule the maximum rates fixed in said Acts of 1905, if the complainant should refuse to do so, or to direct any prosecuting attorney to prosecute or recover of complainant any penalties, or to direct the Attorney General to assist in any such prosecution, or recover any penalties for the complainant's failure to comply with the orders which they proposed from time to time to make in investigations instituted for the enforcement of said Acts of 1905. He denies that at any time they proposed to make any such investigations. On the contrary, this defendant avers that when this suit was begun the time had not arrived at which the Railroad Commissioners could take any action whatever under or in pursuance of said acts of 1905, and that they were not at that time proposing, because the time had not then arrived when they, as such Board of Railroad Commissioners, could properly or lawfully propose any action in the premises. They had not, as a Board, determined or considered the course proper to be pursued by them in respect of the matter when said Acts of 1905 should have taken effect. He denies that any prosecuting attorney or the Attorney General would have conducted such prosecutions or sought to recover any such penalties.

76 As to whether shippers along the line of the complainant's railroad were then and are now numerous, or engaged daily or at all in making or receiving shipments to or from points in the State of Missouri of any freigth of the special classes designated in said Act of 1905, this defendant has no knowledge, information or belief. He denies that by any such shippers or shipper there would have been or will be instituted suits to recover of the complainant any damages or attorneys' fees for charging rates higher than those fixed by said Acts of 1905.

Whether any other shippers in the counties in the state where the complainant's line of road extends are interested with those named as defendants herein, this defendant has no knowledge, information or belief; but he denies that any shipper, or other person not named as a defendant in this action can or will be bound by any decree which may be entered herein.

VIII.

This defendant denies that said Acts of 1905 are invalid or inoperative or of no force or effect for any of the reasons mentioned in paragraph VIII of the complainant's said bill of complaint. He denies that said Acts fix rates confiscatory in their nature or unreasonable in amount, or insufficient to permit the complainant to operate

its property in Missouri, without loss, or make it impossible for freight to be carried by the complainant between points in Missouri, at any profit. He denies that all or any part of said Acts is contrary to or violative of the provisions of the Constitution of the United States or of the Fourteenth Amendment thereto. He denies that said Acts are invalid, as alleged in paragraphs I, XI and XIII of said bill of complaint, or that they are violative of said Fourteenth Amendment to the Constitution of the United States. He denies that the provision of said Act of April 15th, 1905, that in computing the rate of freight the distance shall be computed from the point where it is received to the point of destination in the state, notwithstanding it may pass from one road to another, impairs the complainant's freedom of contract or fixes a rate for it based upon carriage over the line of another road, or that thereby any provision of the Federal Constitution or of any amendment thereto is violated, or that the freedom of contract guaranteed by Section 4 of Article 2 of the State Constitution is denied. He denies that said Section 1194*a* is a discrimination between individuals and companies, or denies to the complainant the equal protection of the law guaranteed to it by the Fourteenth Amendment to the Constitution of the United States.

77

This defendant further avers that even if said Section 1194*a* did operate to discriminate against the complainant, it might be stricken out and Section 1194 would remain a valid and complete enactment, capable of enforcement. He avers that the effect of said Section 1194*a* is not to discriminate against the complainant, and that at the time of the taking effect of said Act of 1905, there was not and is not now any railroad or part of railroad in the State of Missouri which is not owned and operated by a railroad company. He denies that said law as it now stands is uncertain, as averred in subdivision (*e*) of paragraph VIII of the complainant's bill of complaint, for the reason stated therein, or for any other reason, or that said Act of 1905 is invalid because of any reason stated in said subdivision (*e*).

IX.

This defendant has no knowledge, information or belief as to the number of miles of railroad embraced in the entire system of the complainant, or whether the whole of it, or that portion of it in Missouri, was constructed and fairly acquired at a fair and reasonable cost, or whether any of complainant's railroads were judiciously located, or have at any time been properly or economically operated; or whether its capitalization in bonds and stocks aggregates the amount per mile stated in paragraph IX of the bill of complaint, or whether such capitalization is fair or reasonable; or whether its fixed charges are reasonable, or whether the complainant's lines in Missouri secure and receive a due, fair and reasonable proportional benefit of the entire system, or the value of the property in Missouri, or its capacity for serving the public, is proportionately increased or augmented thereby; or whether the cost of constructing or replacing its railroad in Missouri, and providing and furnishing its equipment and terminals or constructing and re-

78

placing its entire system to-day would exceed its original cost, this defendant has no knowledge, information or belief, nor has he any knowledge, information or belief whether the complainant has or has not been able in the past to have any returns in the way of dividends on its preferred or common stock; or whether the complainant's property was operated as a part of a whole system, or whether the rates at which it was operated were higher or lower.

He denies that the rates, or any of them, fixed in said Acts of 1905, are unjust, unfair, confiscatory or unreasonable.

X.

This defendant admits that the rates, at the time of the filing of said bill of complaint and now, charged by the complainant for state shipments on some of the classes of freight mentioned in said Act of 1905 were and are, in some cases, in excess of the maximum therein fixed, but he is informed and believes that as to some of the commodities mentioned in said Act the rates so charged by the complainant were and are less than the maximum rates fixed by said Act. He denies that if charges for the classes of freight mentioned in said Act of 1905 should be made by the complainant at the maximum rates fixed in said Act, the complainant would be required to do such business without profit or at any loss, or without return upon its investment in this state. He denies that the rates fixed in said Act are unjust or unreasonable low or confiscatory in their nature, or that they will not make a return upon the investment in the property of complainant in this state, or that the gross receipts of all the state business which the complainant does, can or will do in Missouri,
79 when charging the maximum rates fixed by the Act of 1905, for the classes of freight therein mentioned, will not be sufficient to pay the operating expenses and the cost of doing such business in the state or that there will not be left any sum as profit or return upon the value of the property of the complainant devoted to the use of such business in this state.

He denies that the maximum rates for any class of freight mentioned in said Act of 1905 are not sufficient to pay the cost of the carriage thereof.

XI.

This defendant has no knowledge, information or belief as to the amount of the total earnings of the complainant from local or state freight business in Missouri for the last three years or any one of them, or whether they were or were not in excess of the amounts stated in paragraph XI of complainant's bill of complaint. He denies that the expense of doing such local and state business for said three years or for any one of them was in excess of the complainant's earnings therefrom in the amounts mentioned in the said bill of complaint, or of any amount whatever.

This defendant has no knowledge, information or belief, as to whether any reduction in rates under said Act of 1905 will not increase the local traffic, or whether the volume of state and local business will not be more in 1905 than it was in 1904, or as to whether

the expense of doing such business will be as great, or whether, if such business should increase, there would be a proportionate increase in such expense. This defendant has no knowledge, information or belief as to whether the value of that part of the complainant's property in Missouri, used in doing state and local business, is not less than $8,607,594.37, or what is the value of such part of the complainant's property.

This defendant denies that if the complainant, for the classes of freight mentioned in said Acts of 1905, should charge the maximum rates therein fixed, its total gross receipts from local or state
80 traffic in Missouri would be reduced, in any sum whatever, per annum. Whether the expense of doing business, in such case, will or will not be lessened, this defendant has no knowledge, information or belief.

He denies that any reduction of rates, attempted by said Acts of 1905, is unfair or unjust, or that they fail to give a fair return on the investment in the complainant's property, or that the enforcement of said Acts will compel the complainant to do its local and state business in such a way as not to permit it to make a fair and reasonable profit thereon.

XII.

This defendant admits that the companies mentioned in paragraph XII of the Complainant's bill of complaint carry the classes of freight mentioned in said Acts, and that they claim that the maximum rates thereby fixed are confiscatory in their nature, and if charged, would result in their doing their state business without any profit. But this defendant denies that such claim is, in point of fact, true.

This defendant denies that the maximum rates fixed by said Acts of 1905 are unreasonably low as against any of said companies or that they will not permit any of them to make a profit upon their state business, or that for that reason said Acts are invalid as against said companies.

He denies that said Acts, if held valid as to complainant are unconstitutional because of any alleged discrimination between the complainant and any other persons or corporations operating railroads in this state. He avers that the only discrimination of which the complainant will be allowed to complain is a discrimination against itself in favor of some other person or corporation; and he denies that any of the provisions of the Constitution of the United States or of any of the amendments thereto are in any respect violated by said Acts.

XIII.

Further answering and with special reference to the averments of paragraph XIII of the complainant's bill of complaint, this
81 defendant denies that said Acts of 1905 fix and establish maximum rates which are unjust, or unreasonable or unconstitutional, for any reason.

This defendant has no knowledge, information or belief as to whether the cost of transporting live stock is greater than that of any

of the other commodities mentioned in said Acts; or whether the same reduces the rate on said live stock on an average of 29.6 per cent; or whether the reduction in rates on salt and cement is only 22 per cent, or in the case of lumber, lath and shingles, 17.8 per cent. He has no knowledge, information or belief as to whether the different articles transported on complainant's railway have been arranged in classes, according to cost of carriage, price, risk of injury, bulk, volume of traffic, or any other circumstances, or have remained in substantially the same classes for any period of time, or whether the same has been recognized, approved or enacted into law by any statutory classification in effect in Missouri.

He denies that any reduction in rates upon articles affected by the said Act of 1905 is unequal, or partial, or arbitrary as compared with any other commodities or as between the commodities included in said Act. Or that the same works any injustice between shippers, purchasers or manufacturers of the State of Missouri, or deprives them of their property without due process of law, or deprives them of the equal protection of the laws, or operates to deprive the complainant of its property without due process of law, or deprives the complainant of the equal protection of the laws by any of the methods or for any of the reasons mentioned in said paragraph XIII of the bill of complaint. He denies that the Legislature had or has established maximum rates of charges for the transportation of all kinds of property, or that even if the Legislature had done so, any change effected in such rates by said Act of 1905 is presumably unfair or unreasonable in any respect. He denies that the Legislature requires
the complainant to discriminate in favor of any persons or
82 shippers, or to give them a right of transportation for a less
rate than the general rate heretofore fixed by any law; or that such rate is less than is just and reasonable in view of the cost to the carrier and the value of the services rendered to the shipper

XIV.

This defendant, further answering, avers that he is not a proper party defendant to said bill of complaint, and that the same is wholly without equity as against this defendant.

XV.

This defendant, further answering, says that he is informed and believes that this complainant and seventeen other railroad companies or corporations, owning and operating lines of railroad in the State of Missouri, immediately after the approval of said Act of 1905, agreed and came to an understanding with each other that none of them would comply with the provisions thereof, or transport the commodities named in said Act at the rates mentioned therein, or make any effort to revise their schedules of rates for transporting the commodities mentioned in said Act and other commodities transported by them, in such a manner as to yield obedience to said Act and at the same time derive a reasonable profit upon the fair valuation of their property necessary to carry on their intra-state

business, but determined, on concerted action among themselves, to disobey said Act, to deny its validity, and any obligation on their part to comply with it, and to bring suits each of them for itself, on the day said Act should take effect, to enjoin the officers of the State from taking any action or discharging any duties which might be imposed upon them by law in respect to said Act, and for the further purpose of obtaining a decree of this Court adjudging said Act to be null and void upon the grounds stated in this complainant's bill of complaint.

This defendant further avers that in pursuance of said agreement and understanding this complainant and the said seventeen other companies or corporations did, on the 16th day of June, 1905,
83 each for itself, file in this court its bill of complaint, all of them being upon substantially the same grounds as those stated in this complainant's bill of complaint, praying for substantially the same relief, and did, on the same day, in each of said suits, obtain from this court a restraining order, directed to and which was served upon the members of said Board of Railroad Commissioners this defendant, and certain persons designated in said bills of complaint as shippers, enjoining this defendant and the said Board from performing any of the duties imposed upon them as state officials, by law, looking to the enforcement of the provisions of said act (for the express terms of which said order this defendant prays leave to refer to the same as it appears in the record of this cause), and afterwards, while said restraining order was in force, did obtain from this court a preliminary injunction in the terms of said order, which said preliminary injunction is still operative.

This defendant says that he is informed and believes that the rates fixed by said Act of 1905 do not affect all the articles of freight transported by the complainant in its intra-state traffic, but that a very large number of articles, and a very large part of its intra-state traffic remain wholly unaffected and unregulated as to rates, by said Act or by any other existing statute. And this defendant says that the question of whether rates are compensatory or otherwise can only be determined upon a consideration of a schedule of rates which shall embrace every article and all the freight transported by the complainant in carrying on its intra-state business.

This defendant is informed and believes that the complainant, if it had chosen to do so, instead of attacking the reasonableness or fairness of the rates upon the few articles mentioned in the Act of 1905, might have revised its schedule or tariff of rates upon all the articles of freight transported by it in carrying on its intra-
84 state traffic, including those mentioned in said Act of 1905, in such a manner that the rates for carrying the articles not mentioned in said Act would have been not unreasonable or unjust, either to itself or to the public, and that the income derived by the complainant for performing the service of transporting freight at the rates and charges fixed in such a schedule would have been sufficient to assure to the complainant a fair and reasonable return upon the fair value of its property necessarily employed in the carrying on of such intra-state business.

This defendant further avers that the complainant afforded to the Board of Railroad Commissioners no opportunity, after said Act of 1905 took effect, to revise, adjust and fix a schedule of rates upon all the articles of freight transported by the complainant in its intra-state traffic, including those mentioned in said Act of 1905, in such a manner that the provisions of said Act of 1905 would be observed, and at the same time the rates upon all other articles not mentioned in said Act should be not unreasonable or unjust, either to the complainant or to the public.

This defendant is informed and believes that if the complainant had failed to so revise or to attempt to so revise its schedules, the defendants, members of such Board, would, if they had been given the opportunity, which was denied to them by the injunction in this cause, in the discharge of the duties imposed on them by law, have attempted to fix and establish such a schedule of rates upon all the articles of freight transported by the complainant in its intra-state traffic as would have observed or complied with the provisions of said Act of 1905, and in other respects have been not unjust or unfair either to the complainant or to the public, and he believes that they could have done so.

This defendant further says that by the issue of the restraining order and the preliminary injunction in this cause, the members of said Board have been prevented from fixing any such schedule
or attempting to fix a schedule of rates which should be
85 just to the complainant and to the shippers; that the complainant, by the filing of its bill before they, as such Board could lawfully act in the premises, has unwarrantably assumed that they, as such Board, would fix and establish a schedule of rates which would be unjust to the complainant.

This defendant says that in view of the statutes of this state, which define the duties to be discharged by them as such Board, this action ought not to be maintained, because it was brought before they had any opportunity to discharge any of such duties or act in the matter of a general revision of the schedule of rates, made necessary by said Act of 1905.

This defendant denies that the complainant is entitled to any relief whatever against this defendant, without this, that any other matter, cause or thing in the complainant's said bill of complaint, or amendments thereto, contained, material or necessary for this defendant to make answer unto, and not herein or hereby well and sufficiently answered, confessed, traversed and avoided or denied, is true to the knowledge or belief of this defendant; all which matters and things this defendant is ready and willing to aver, maintain and prove, as this Honorable Court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

HERBERT S. HADLEY,
Attorney General;
JOHN KENNISH,
Assistant Attorney General,
Solicitors for Defendant.

SANFORD B. LADD,
Of Counsel.

86 Afterwards, towit, on the 4th day of December, 1905, the joint and several answer of C. C. Kelly and M. P. Welch was filed.

Said answer is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 2997.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY, Complainant,

vs.

JOHN A. KNOTT, JOSEPH P. RICE, and FRANK A. WIGHTMAN, the Board of Railroad & Warehouse Commissioners of the State of Missouri, a Corporation Organized under the Laws of Missouri; Herbert S. Hadley, Attorney General of the State of Missouri; C. C. Kelly and M. P. Belch, Prosecuting Attorneys of Pettis and Cole Counties, Missouri, Respectively; J. F. Parker, Geo. West, and N. Doherty, Defendants.

The Joint and Several Answer of C. C. Kelly and M. P. Belch, Two of the Defendants, to the Bill of Complaint of the Missouri, Kansas & Texas Railway Company, Complainant.

These defendants, respectively, now and at all times hereafter saving to themselves all and all manner of benefit of exception or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in the said bill contained, for answer thereto, or to so much thereof as these defendants are advised it is material or necessary for them to make answer to, answering, say:

I.

87 They admit the averments of paragraph numbered 1 of the complainant's bill of complaint, except in the following particulars:

They have no knowledge, information or belief as to the ownership or operation by the complainant of the different lines of railway mentioned in said paragraph, or as to the mileage of each line, or as to whether there are operated in harmony with, or as a part of what is known as the Missouri, Kansas & Texas Railway System, any line or lines of railroad in the State of Texas or in the State of Louisiana; nor have they any knowledge, information or belief as to whether the stock of the Missouri, Kansas & Texas Railway Company, of Texas, or any of it, is held by any trustee in any mortgage of the complainant, or for the benefit of the complainant's first and second mortgage bondholders and stockholders, or whether any dividends have ever been earned or paid on the stock of the said Missouri, Kansas & Texas Railway Company, of Texas.

These defendants have no knowledge, information or belief as to whether the complainant borrowed any money to aid or assist it

in the construction, acquisition or maintenance of any of said lines of railway, or whether it executed any of the mortgages, or whether, to secure the payment thereof, it executed any of the mortgages described in said paragraph I of the bill of complaint.

These defendants have no knowledge, information or belief as to whether the complainant purchased or acquired any of the lines of railway mentioned in said paragraph I of said bill of complaint, in the manner stated therein, or in any other manner, or whether such purchase or acquisition in any case was subject to the mortgages on the property, or any part of them, therein mentioned, or as-
88 sumed or agreed to pay the bonds issued under any of them.

These defendants have no knowledge, information or belief as to the number, character, date or amount of the bonds averred in the bill of complaint to be issued and outstanding under said mortgage, or as to the correctness, in any particular, of the statement thereof, contained in said paragraph I; or whether the complainant is liable for the payment of the principal or interest of any of the bonds of the Missouri, Kansas & Texas Railway Company, of Texas, the Dallas & Waco Railway Company, or the Sherman, Shreveport & Southern Railway Company, as a consequence of guaranteeing the same or otherwise; or whether said two last-named companies, or either of them, have been merged into the Missouri, Kansas & Texas Railway Company, of Texas; or whether the complainant is liable, as guarantor, or otherwise, for one million dollars of bonds, principal and interest, of the Boonville Railroad Bridge Company, or whether the complainant is the lessee of said bridge, or the same forms a part of the complainant's railroad in the State of Missouri.

These defendants have no knowledge, information or belief as to the amount of assets or liabilities of the complainant, at the end of the fiscal year ending June 30th, 1904, or whether they are correctly set forth in the complainant's general balance sheet or in said paragraph I; or whether the statement of assets and liabilities contained in said paragraph I shows the financial condition of the complainant; or whether the statement of the complainant's annual fixed charges, contained in said paragraph I, is correct in whole or in detail, in any part thereof.

89 II.

These defendants admit that this cause arises under the Constitution and laws of the United States; but they deny that said Act of 1905 is unconstitutional or violative of the provisions of the Constitution of the United States, or of the Fourteenth Amendment thereto, or contrary to the laws of the United States. They admit that the matter and amount in dispute exceeds, exclusive of interest and costs, the sum or value of Two Thousand Dollars ($2,000.).

III.

These defendants admit that the defendants John A. Knott, Joseph P. Rice and Frank A. Wightman constitute the Board of

Railroad Commissioners of the State of Missouri, and that the defendant Hadley is the Attorney General of the State of Missouri, and that these defendants C. C. Kelley and M. P. Belch are respectively prosecuting attorneys of Pettis and Cole Counties, Missouri; but they deny that either the Railroad Commissioners or these defendants or defendant Hadley, the Attorney General, or either of them, are required by law to do or perform the special duties mentioned in said bill of complaint, except as is in this answer hereinafter admitted and stated.

IV.

They admit that the other defendants are citizens and residents respectively of the State of Missouri, and of the Counties of said State mentioned in paragraph IV of said bill of complaint; but whether each or any of them are engaged in shipping over the complainant's road or other roads in the State of Missouri, any of the com-
90 modities mentioned in the Act of 1905, or whether they represent any class of shippers, these defendants have no knowledge, information or belief.

V.

They admit that paragraph V of the complainant's bill of complaint correctly sets out Sections 1191, 1192 and 1193 of the Revised Statutes of Missouri, of 1899, and that Section 1194 of said Revised Statutes fixes the maximum rates for the classes of freight designated in said Section 1193 as Classes D, E, F, G, H, I and J, respectively. They admit that the statutes of the state provide for the election and qualification of Railroad Commissioners, and prescribe their special duties, and as to the allegations in paragraph V of said bill of complaint, regarding the special duties imposed upon them and the Attorney General and Prosecuting Attorneys, by the statutes of the State. They aver that Articles II and IV of Chapter 12 of the Revised Statutes of Missouri, of 1899, and an Act of the General Assembly of the State of Missouri, entitled, "An Act to amend Chapter 12 of the Revised Statutes of the State of Missouri, of 1899, entitled 'Corporations, private,' by adding two new sections after Section 1194, to be known as Sections 1194*a* and 1194*b*, providing that the Board of Railroad and Warehouse Commissioners shall fix, maintain, establish, reduce and modify freight rates upon all railroads in this State, and providing for the manner of so doing and enforcing the same," approved April 6, 1903, published in the "Laws of Missouri, passed at the Session of the Forty-second General Assembly" at page 132, of which said statutes and Act this Court will take judicial notice, prescribe particularly all the duties imposed by law upon those defendants, constituting the Board of Railroad Commissioners, and the Attorney General and Prosecuting
91 Attorneys, respecting freight rates and the enforcement of any laws of this state governing or affecting the same; and they pray leave to refer to said statutes and said Act, and that the same may be considered in connection with this answer, with like effect as if they had been fully set out herein.

VI.

These defendants admit the passage by the Legislature of the State of Missouri, of the Act approved April 6, 1903, and that said act is correctly set out in paragraph VI of said bill of complaint.

VII.

These defendants admit the passage by the Legislature of the State of Missouri, of the Acts approved April, 1905, and April 14, 1905, and that said Acts are correctly set out in paragraph VII of said bill of complaint. They admit that said Acts took effect on the 16th day of June, 1905; that the rates at the time of the filing of said bill of complaint being charged by the complainant for the transportation of freight of the character mentioned in said last-named Acts, were shown in schedules on file with the Railroad Commissioners; but these defendants deny that said rates so charged by complainant were, as respects all the freight of the character mentioned in said Acts, in excess of the maximum rates fixed by said Act of 1905. They admit that as to some of the commodities mentioned in said Acts the same would require some reduction in the rates charged by the complainant for the transportation thereof at the time of the filing of said bill of complaint,
92 and that such reduction would make necessary a change in the schedules so filed by the complainant with the Railroad Commissioners; but these defendants deny that such change could not and cannot be made by the complainant without jeopardizing its property interests. These defendants deny that the Railroad Commissioners had, at or before the filing of said bill of complaint, threatened to enforce the provisions of said Acts of 1905, by entering upon investigations, either upon the instigation of the Board of Railroad Commissioners or on the complaint of shippers or by determining or adjudging complainant's then-existing schedule of rates to be unreasonable, unjust or extortionate, or by requiring the complainant, under pain of any penalties, to file or publish a new schedule, fixing rates not in excess of those mentioned in said Acts of 1905, and they deny that they proposed to do any of said things. They deny that the Railroad Commissioners proposed to file, post or publish as the complainant's schedule, the maximum rates fixed in said Acts of 1905, if the complainant should refuse to do so, or to direct any prosecuting attorney to prosecute or recover of complainant any penalties, or to direct the Attorney General to assist in any such prosecution, or recover any penalties for the complainant's failure to comply with the orders which they proposed from time to time to make in investigations instituted for the enforcement of said Acts of 1905. They deny that at any time they proposed to make any such investigations. On the contrary, these defendants aver that when this suit was begun the time had not arrived at which the Railroad Commissioners could take any action whatever under or in pursuance of said Acts of 1905, and that they were not at that time proposing, because the time had not then arrived when
93 they, as such Board of Railroad Commissioners, could properly or lawfully propose any action in the premises. They

had not, as a Board, determined or considered the course proper to be pursued by them in respect of the matter when said Acts of 1905 should have taken effect. They deny that they or any prosecuting attorney or the Attorney General would have conducted such prosecutions or sought to recover any such penalties.

As to whether shippers along the line of the complainant's railroad were then and are now numerous, or engaged daily or at all in making or receiving shipments to or from points in the State of Missouri of any freight of the special classes designated in said Acts of 1905, these defendants have no knowledge, information or belief. They deny that by any such shippers or shipper there would have been or will be instituted suits to recover of the complainant any damages or attorney's fees for charging rates higher than those fixed by said Acts of 1905.

Whether any other shippers in the counties in the state where the complainant's line of road extends are interested with those named as defendants herein, these defendants have no knowledge, information or belief; but they deny that any shipper or other person not named as a defendant in this action can or will be bound by any decree which may be entered herein.

VIII.

These defendants deny that said Acts of 1905 are invalid or inoperative or of no force or effect for any of the reasons mentioned in paragraph VIII of the complainant's said bill of complaint. They deny that said Acts fix rates confiscatory in their nature or
94 unreasonable in amount, or unsufficient to permit the complainant to operate its property in Missouri, without loss, or make it impossible for freight to be carried by the complainant between points in Missouri, at any profit. They deny that all or any part of said Acts is contrary to or violative of the provisions of the Constitution of the United States, or of the Fourteenth Amendment thereto. They deny that said Acts are invalid, as alleged in paragraphs I, XI and XIII of said bill of complaint, or that they are violative of said Fourteenth Amendment to the Constitution of the United States. They deny that the provision of said Act of April 15th, 1905, that in computing the rate of freight the distance shall be computed from the point where it is received to the point of destination in the state, notwithstanding it may pass from one road to another, impairs the complainant's freedom of contract or fixes a rate for it based upon carriage over the line of another road, or that thereby any provision of the Federal Constitution or of any amendment thereto is violated, or that the freedom of contract guaranteed by Section 4 of Article 2 of the State Constituion is denied. They deny that said Section 1194*a* is a discrimination between individuals and companies, or denies to the complainant the equal protection of the law guaranteed to it by the Fourteenth Amendment to the Constitution of the United States.

These defendants further aver that even if said Section 1194*a* did operate to discriminate against the complainant, it might be stricken

out and Section 1194 would remain a valid and complete enactment, capable of enforcement. They aver that the effect of said section 1194*a* is not to discriminate against the complainant, and that at the time of the taking effect of said Act of 1905 there was not and
is not now any railroad or part of railroad in the State of
95 Missouri which is not owned and operated by a railroad company. They deny that said law as it now stands is uncertain, as averred in subdivision (*e*) of paragraph VIII of the complainant's bill of complaint, for the reason stated therein, or for any other reason, or that said Act of 1905 is invalid because of any reason stated in said subdivision (*e*).

IX.

These defendants have no knowledge, information or belief as to the number of miles of railroad embraced in the entire system of the complainant, or whether the whole of it, or that portion of it in Missouri, was constructed and fairly acquired at a fair and reasonable cost, or whether any of complainant's railroads were judiciously located, or have at any time been properly or economically operated or whether its capitalization in bonds and stocks aggregate the amount per mile stated in paragraph IX of the bill of complaint, or whether such capitalization is fair or reasonable; or whether its fixed charges are reasonable; or whether the complainant's lines in Missouri secure and receive a due, fair and reasonable proportional benefit of the entire system, or the value of the property in Missouri, or its capacity for serving the public, is proportionately increased or augmented thereby; or whether the cost of constructing or replacing its railroad in Missouri, and providing and furnishing its equipment and terminals, or constructing and replacing its entire system to-day would exceed its original cost, these defendants have no knowledge, information or belief; nor have they any knowledge, information or belief whether the complainant has or has not been able in the past to have any returns in the way of dividends on its preferred or common stock; or whether the complainant's property was operated as
a part of a whole system, or whether the rates at which it
96 was operated were higher or lower.

They deny that the rates, or any of them, fixed in said Acts of 1905, are unjust, unfair, confiscatory or unreasonable.

X.

These defendants admit that the rates, at the time of the filing of said bill of complaint and now, charged by the complainant for state shipments on some of the classes of freight mentioned in said Act of 1905, were and are, in some cases, in excess of the maximum therein fixed, but they are informed and believe that as to some of the commodities mentioned in said Act the rates so charged by the complainant were and are less than the maximum rates fixed by said Act. They deny that if charges for the classes of freight mentioned in said Act of 1905 should be made by the complainant at the maximum rates fixed in said Act, the complainant would be required to

do such business without profit or at any loss, or without return upon its investment in this state. They deny that the rates fixed in said Act are unjust or unreasonably low or confiscatory in their nature, or that they will not make a return upon the investment in the property of complainant in this state, or that the gross receipts of all the state business which the complainant does, can or will do in Missouri, when charging the maximum rates fixed by the Act of 1905, for the classes of freight therein mentioned, will not be sufficient to pay the operating expenses and the cost of doing such business in the state, or that there will not be left any sum as profit or return upon the value of the property of the complainant devoted to the use of such business in this state.

They deny that the maximum rates for any class of freight mentioned in said Act of 1905 are not sufficient to pay the cost of the carriage thereof.

97 XI.

These defendants have no knowledge, information or belief as to the amount of the total earnings of the complainant from local or state freight business in Missouri for the last three years or any one of them, or whether they were or were not in excess of the amounts stated in paragraph XI of complainant's bill of complaint. They deny that the expense of doing such local and state business for said three years or for any one of them was in excess of the complainant's earnings therefrom in the amounts mentioned in the said bill of complaint, or of any amount whatever.

These defendants have no knowledge, information or belief as to whether any reduction in rates under said Acts of 1905 will not increase the local traffic, or whether the volume of state and local business will not be more in 1905 than it was in 1904, or as to whether the expense of doing such business will be as great, or whether, if such business should increase, there would be a proportionate increase in such expense. These defendants have no knowledge, information or belief as to whether the value of that part of the complainant's property in Missouri, used in doing state and local business, is not less than $8,607,594.37 or what is the value of such part of the complainant's property.

These defendants deny that if the complainant, for the classes of freight mentioned in said Acts of 1905, should charge the maximum rates therein fixed, its total gross receipts from local or state traffic in Missouri would be reduced, in any sum whatever, per annum. Whether the expense of doing business in such case, will or will not be lessened, these defendants have no knowledge, information or belief.

They deny that any reduction of rates, attempted by said Acts of 1905, is unfair or unjust, or that they fail to give a fair return on the investment in the complainant's property, or that the enforcement of said Acts will compel the complainant to do its local and state business in such a way as not to permit it to make a fair and reasonable profit thereon.

98 XII.

These defendants admit that the companies mentioned in paragraph XII of the complainant's bill of complaint carry the classes for freight mentioned in said Acts, and that they claim that the maximum rates thereby fixed are confiscatory in their nature, and if charged, would result in their doing their state business without any profit. But these defendants deny that such claim is, in point of fact, true.

These defendants deny that the maximum rates fixed by said Acts of 1905 are unreasonably low as against any of said companies or that they will not permit any of them to make a profit upon their state business, or that for that reason said Acts are invalid as against said companies.

They deny that said Acts, if held valid as to complainant, are unconstitutional because of any alleged discrimination between the complainant and any other persons or corporations operating railroads in this state. They aver that the only discrimination of which the complainant will be allowed to complain is a discrimination against itself in favor of some other person or corporation; and they deny that any of the provisions of the Constitution of the United States or of any of the amendments thereto are in any respect violated by said Acts.

XIII.

Further answering and with special reference to the averments of paragraph XIII of the complainant's bill of complaint, these defendants deny that said Acts of 1905 fix and establish maximum rates which are unjust, or unreasonable or unconstitutional, for any reason.

These defendants have no knowledge, information or belief as to whether the cost of transporting live stock is greater than that
99 of any of the other commodities mentioned in said Acts; or whether the same reduces the rate on said live stock on an average of 29.6 per cent; or whether the reduction in rates on *sale* and cement is only 22 per cent, or in the case of lumber, lath and shingles, 17.8 per cent. They have no knowledge, information or belief as to whether the different articles transported on complainant's railway have been arranged in classes, according to cost of carriage, price, risk of injury, bulk, volume of traffic or any other circumstances, or have remained in substantially the same classes for any period of time, or whether the same has been recognized, approved or enacted into law by any statutory classification in effect in Missouri.

They deny that any reduction in rates upon articles affected by the said Act of 1905 is unequal, or partial, or arbitrary as compared with any other commodities or as between the commodities included in said Act; or that the same works any injustice between shippers, purchasers or manufacturers of the State of Missouri, or deprive them of their property without due process of law, or deprive them of the equal protection of the laws, or operate to deprive the complainant of its property without due process of law, or deprive the complainant

of the equal protection of the laws by any of the methods or for any of the reasons mentioned in said paragraph XIII of the bill of complaint. They deny that the Legislature had or has established maximum rates of charges for the transportation of all kinds of property, or that even if the Legislature had done so, any change effected in such rates by said Act of 1905 is presumably unfair or unreasonable in any respects. They deny that the Legislature requires the complainant to discriminate in favor of any persons or shippers, or to give them a right of transportation for a less
100 rate than the general rate heretofore fixed by any law; or that such rate is less than is just and reasonable in view of the cost to the carrier and the value of the services rendered to the shipper.

XIV.

These defendants further answering, aver that they are not a proper parties defendant to said bill of complaint, and that the same is wholly without equity as against these defendants.

XV.

These defendants further answering, say that they are informed and believe that this complainant and seventeen other railroad companies or corporations, owning and operating lines of railroad in the State of Missouri, immediately after the approval of said Act of 1905, agreed and came to an understanding with each other that none of them would comply with the provisions thereof, or transport the commodities named in said Act at the rates mentioned therein, or make any effort to revise their schedules of rates for transporting the commodities mentioned in said Act and other commodities transported by them, in such a manner as to yield obedience to said Act and at the same time derive a reasonable profit upon the fair valuation of their property necessary to carry on their intrastate business, but determined, on concerted action among themselves, to disobey said Act, to deny its validity and any obligations on their part to comply with it, and to bring suits each of them for itself, on the day said Act should take effect, to enjoin the officers of the state from taking any action or discharging any duties which might be imposed upon them by law in respect of said Act, and for the purpose of obtaining a decree of this court adjudging said Act to be null and void upon the grounds stated in this complainant's bill of complaint.

101 These defendants further aver that in pursuance of said agreement and understanding this complainant and the said seventeen other companies or corporations did, on the 16th day of June, 1905, each for itself, file in this court its bill of complaint, all of them being upon substantially the same grounds as those stated in this complainant's bill of complaint, praying for substantially the same relief, and did, on the same day, in each of said suits, obtain from this court a restraining order, directed to and which was served upon the members of said Board of Railroad Commissioners, this defendant, and certain persons designated in said bills of com-

plaint as shippers, enjoining this defendant and the said Board from performing any of the duties imposed upon them as state officials, by law, looking to the enforcement of the provisions of said Act, (for the express terms of which said order these defendants pray leave to refer to the same as it appears in the record of this cause,) and afterwards, while said restraining order was in force, did obtain from this court a preliminary injunction in the terms of said order, which said preliminary injunction is still operative.

These defendants say that they are informed and believe that the rates fixed by said Act of 1905 do not affect all the articles of freight transported by the complainant in its intra-state traffic, but that a very large number of articles, and a very large part of its intra-state traffic remain wholly unaffected and unregulated as to rates, by said Act or by any other existing statute. And these defendants say that the question of whether rates are compensatory or otherwise can only be determined upon a consideration of a schedule of rates which shall embrace every article and all the freight transported by the complainant in carrying on its intra-state business.

102 These defendants are informed and believe that the complainant, if it had chosen to do so, instead of attacking the reasonableness or fairness of the rates upon the few articles mentioned in the Act of 1905, might have revised its schedule or tariff of rates upon all the articles of freight transported by it in carrying on its intra-state traffic, including those mentioned in said Act of 1905, in such a manner that the rates for carrying the articles not mentioned in said Act would have been not unreasonable or unjust, either to itself or to the public, and that the income derived by the complainant for performing the service of transporting freight at the rates and charges fixed in such a schedule would have been sufficient to assure to the complainant a fair and reasonable return upon the fair value of its property necessarily employed in the carrying on of such intra-state business.

These defendants further aver that the complainant afforded to the Board of Railroad Commissioners no opportunity, after said Act of 1905 took effect, to revise, adjust and fix a schedule of rates upon all the articles of freight transported by the complainant in its intra-state traffic, including those mentioned in said Act of 1905, in such a manner that the provisions of said Act of 1905 would be observed, and at the same time the rates upon all other articles not mentioned in said Act would be not unreasonable or unjust, either to the complainant or to the public.

These defendants are informed and believe that if the complainant had failed to so revise or to attempt to so revise its schedules, the defendants, members of such Board, would, if they had been

103 given the opportunity, which was denied to them by the injunction in this cause, in the discharge of the duties imposed on them by law, have attempted to fix and establish such a schedule of rates upon all the articles of freight transported by the complainant in its intra-state traffic as would have observed or complied with the provisions of said Act of 1905, and in other respects have been not

unjust or unfair either to the complainant or to the public, and he believes that they could have done so.

These defendants further say that by the issue of the restraining order and the preliminary injunction in this cause, the members of said Board have been prevented from fixing any such schedule or attempting to fix a schedule of rates which should be just to the complainant and to the shippers; that the complainant, by the filing of its bill before they, as such Board, could lawfully act in the premises, has unwarrantably assumed that they as such Board, would fix and establish a schedule of rates which would be unjust to the complainant.

These defendants say that in view of the statutes of this state, which define the duties to be discharged by said Board of Railroad Commissioners, this action ought not to be maintained, because it was brought before they had any opportunity to discharge any of such duties or act in the matter of a general revision of the schedule of rates, made necessary by said Act of 1905.

These defendants deny that the complainant is entitled to any relief whatever against these defendants, without this, that any other matter, cause or thing in the complainant's said bill of complaint, or amendments thereto, contained, material or necessary for
104 these defendants to make answer unto, and not herein or hereby well and sufficiently answered, confessed, traversed and avoided, or denied, is true to the knowledge or belief of this defendant; all which matters and things these defendants are ready and willing to aver, maintain and prove, as this honorable court shall direct, and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

HERBERT S. HADLEY,
Attorney General;
JOHN KENNISH,
Assistant Attorney General,
Solicitors for Defendants.

SANFORD B. LADD,
Of Counsel.

105 Afterwards, to-wit, on the 17th day of February, 1906, the replication of complainant to the answer of John A. Knott et al., was filed.

Said replication is in words and figures as follows:—

In the United States Circuit Court for the Western Division of the Western District of Missouri.

In Equity. No. 2997.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY, Complainant,
vs.
JOHN A. KNOTT et al., Defendants.

Replication of Complainant to the Answer of John A. Knott, Joseph P. Rice and Frank A. Wightman, Railroad Commissioners.

This replicant, saving and reserving to itself all and all manner of advantages of exception which may be had and taken to the manifold errors, uncertainties and insufficiencies of the answer of the said defendants, for replication thereunto saith that it doth and will aver, maintain, and prove its said bill to be true, certain and sufficient in the law to be answered unto by the said defendants, and that the answer of the said defendants is very uncertain, evasive and insufficient in law to be replied unto by this replicant; without that that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed, or avoided, traversed or denied, is true; all which matters and things this replicant is ready to aver, maintain and prove as this honorable Court shall direct, and prays as in and by its said bill it hath already prayed.

JAMES HAGERMAN,
GEO. P. B. JACKSON,
JOSEPH M. BRYSON,
FRANK HAGERMAN,
Solicitors for Complainant.

Received a copy of the foregoing replication, and it may be filed as of proper time.

HERBERT S. HADLEY,
Attorney General;
JOHN KENNISH,
SANFORD B. LADD,
Solicitors for said Defendants.

106 Afterwards, towit, on the 17th day of February 1906, the replication of complainant to the answer of Herbert S. Hadley, Attorney General, was filed.

Said replication is in words and figures as follows:—

In the United States Circuit Court for the Western Division of the Western District of Missouri.

In Equity. No. 2997.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY, Complainant,
vs.
JOHN A. KNOTT et al., Defendants.

Replication of Complainant to the Answer of Herbert S. Hadley, Attorney General.

This replicant, saving and reserving to itself all and all manner of advantages of exception which may be had and taken to the manifold errors, uncertainties and insufficiencies of the answer of the said defendant, for replication thereunto saith that it doth and will aver, maintain, and prove its said bill to be true, certain and sufficient in the law to be answered unto by the said defendant, and that the answer of the said defendant is very uncertain, evasive and insufficient in law to be replied unto by this replicant; without that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed, or avoided, traversed or denied, is true; all which matters and things this replicant is ready to aver, maintain and prove as this honorable Court shall direct, and prays as in and by its said bill it hath already prayed.

JAMES HAGERMAN,
GEO. P. B. JACKSON,
JOSEPH M. BRYSON,
FRANK HAGERMAN,
Solicitors for Complainant.

Received a copy of the foregoing replication, and it may be filed as of proper time.

HERBERT S. HADLEY,
Attorney General;
JOHN KENNISH,
SANFORD B. LADD,
Solicitors for said Defendant.

107 Afterwards, to-wit, on the 17th of February, 1906, the replication of complainant to the answer of C. C. Kelly et al., was filed.

Said replication is in words and figures as follows:—

In the United States Circuit Court for the Western Division of the Western District of Missouri.

In Equity. No. 2997.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY, Complainant,
vs.
JOHN A. KNOTT et al., Defendants.

Replication of Complainant to the Answer of C. C. Kelly and M. P. Belch, Prosecuting Attorneys of Pettis and Cole Counties, Missouri, Respectively.

This replicant, saving and reserving to itself all and all manner of advantages of exception which may be had and taken to the manifold errors, uncertainties and insufficiencies of the answer of the said defendants, for replication thereunto saith that it doth and will aver, maintain, and prove its said bill to be true, certain and sufficient in the law to be answered unto by the said defendants, and that the answer of the said defendants is very uncertain, evasive and insufficient in law to be replied unto by this replicant; without that that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed, or avoided, traversed or denied, is true; all which matters and things this replicant is ready to aver, maintain and prove as this honorable Court shall direct, and prays as in and by its said bill it hath already prayed.

JAMES HAGERMAN,
GEO. P. B. JACKSON,
JOSEPH M. BRYSON,
FRANK HAGERMAN,
Solicitors for Complainant.

Received a copy of the foregoing replication, and it may be filed as of proper time.

HERBERT S. HADLEY,
Attorney General;
JOHN KENNISH,
SANFORD B. LADD,
Solicitors for said Defendants.

108 Afterwards, to-wit, on the 17th day of February, 1906, a Decree Pro Confesso as to J. F. Parker et al., was filed. Said Decree Pro Confesso is in words and figures as follows:

In the United States Circuit Court for the Western Division of the Western District of Missouri.

No. 2997.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY, Complainant,
vs.
JOHN A. KNOTT et al., Defendants.

Decree pro Confesso.

It appearing that defendant J. F. Parker has heretofore been served with process, and defendants George West and M. Doherty heretofore entered their appearance herein, but none of said defendants has demurred, answered or in any wise pleaded to the bill of complaint within the time required by the rules of this court,

Now therefore, upon motion of solicitors for complainant, it is ordered that the bill of complaint herein be taken pro confesso as to said defendants, in accordance with the rules in such cases made and provided.

JAMES HAGERMAN,
GEO. P. B. JACKSON,
JOSEPH M. BRYSON,
FRANK HAGERMAN,
Solicitors for Complainant.

109 Afterwards, to-wit, on the 26th day of February, A. D., 1906, the answer of George N. West was filed. Said answer is in words and figures as follows:—

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 2997.

MISSOURI, KANSAS AND TEXAS RAILWAY COMPANY, Complainant,
vs.
JOHN A. KNOTT, JOSEPH P. RICE and FRANK A. WIGHTMAN, the Board of Railroad and Warehouse Commissioners of the State of Missouri, a Corporation Organized under the Laws of Missouri; Herbert S. Hadley, Attorney General of the State of Missouri; C. C. Kelly and M. P. Belch Prosecuting Attorneys of Pettis and Cole Counties, Respectively; J. F. Parker, George West, and M. Doherty, Defendants.

Answer of Defendant George N. West, to the Bill of Complaint of The Missouri, Kansas and Texas Railway Company, Complainant.

This defendant now and at all times hereafter saving to himself all and all manner of benefit of exception or otherwise that can or may

be had or taken to the many errors, uncertainties and imperfections in the said bill contained, for answer thereto, or to so much thereof as this defendant is advised it is material or necessary for him to make answer to, answering, says:

I.

He admits the averments contained in paragraph I of said bill of complaint.

II.

As to whether said Act of 1905 is unconstitutional for any reason, this defendant has no knowledge, information or belief. All the other averments of paragraph II of said bill of complaint, this
110 defendant admits.

III.

He admits each and every of the averments contained in paragraph III of said bill of complaint, except in this respect: This defendant has no knowledge, information or belief as to the duties which the Railroad Commissioners or the Attorney General are required by law to do or perform.

IV.

He admits the averments contained in paragraph IV of the bill of complaint, except in this particular: He has no knowledge, information or belief as to whether he represents any class of shippers.

V.

He admits all the averments contained in paragraph V of the bill of complaint, with these exceptions, to-wit: He has no knowledge, information or belief as to what the statutes of the State provide in respect of the duties of the Railroad Commissioners, or of any prosecuting attorney or of the Attorney General

VI.

He admits each and every of the averments of paragraph VI of the bill of complaint.

VII.

He admits that the legislature of the State of Missouri, at its session of 1905, passed the Act called in said bill of complaint, the Act of 1905.

As to whether shippers along the line of complainant's railroad are numerous, or daily engaged in making or receiving shipments of freight of the special classes designated in the Act of 1905, this defendant has no knowledge, information or belief. He de-
111 nies that he was intending or proposing to institute against the complainant any suit whatever to recover of the complainant any damages or any attorneys' fees. He has no knowledge,

information or belief as to whether any other shipper is interested with this defendant, and he denies that he should defend for any such person.

As to each and every other allegation contained in said paragraph VII of the bill of complaint, this defendant says that he has no knowledge, information or belief.

VIII.

As to the truth of the averments and each of them, contained in paragraph VIII of said bill of complaint, this defendant says that he has no knowledge, information or belief.

IX.

This defendant has no knowledge, information or belief as to the truth of the averments, or any of them, contained in paragraph IX of the bill of complaint.

X.

This defendant has no knowledge, information or belief as to the truth of the averments, or any of them, contained in paragraph X of the bill of complaint.

XI.

This defendant has no knowledge, information or belief as to the truth of the averments, or any of them, contained in paragraph XI of the bill of complaint.

XII.

This defendant has no knowledge, information or belief as to the truth of the averments, or any of them, contained in paragraph XII of the bill of complaint.

112 XIII.

This defendant has no knowledge, information or belief as to the truth of the averments, or any of them, contained in paragraph XIII of the bill of complaint.

IV.

This defendant, further answering, says that he is not a proper party defendant to the said bill of complaint, and that he has been improperly joined as a defendant herein; that there is no equity in said bill as against this defendant, and that in any event no costs ought to be adjudged herein against him.

This defendant denies that the complainant is entitled to any relief whatever against this defendant, without this, that any other matter, cause or thing in the complainant's said bill of complaint contained, material or necessary for this defendant to make answer unto, and not herein or hereby well and sufficiently answered, confessed, traversed and avoided, or denied, is true, to the knowledge or belief

of this defendant; all which matters and things this defendant is ready and willing to aver, maintain and prove, as this honorable court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

HERBERT S. HADLEY,
Attorney General;
JOHN KENNISH,
Assistant Attorney General,
Solicitors for Defendants.

SANFORD B. LADD,
Of Counsel.

113 In order to avoid unnecessarily encumbering the record, it is agreed that admission, denials and averments of want of knowledge, information and belief, contained in the foregoing answer, shall be taken and considered in every stage of this suit, with the same force and effect as if such admissions, denials or averments had mentioned specifically and in the language of the bill of complaint, the allegations thereof, which they are respectively intended to meet; that such admisions, denials and averments as to a number of allegations, as a whole, contained in the bill of complaint, shall have the same force and effect as if each of such allegations had been specifically referred to in the language of said bill of complaint.

JAMES HAGERMAN,
GEO. P. B. JACKSON,
JOSEPH M. BRYSON,
FRANK HAGERMAN,
Solicitors for Complainant.

HERBERT S. HADLEY,
Attorney General;
JOHN KENNISH,
Assistant Attorney General.
Solicitors for Defendant.

SANFORD B. LADD,
Of Counsel.

114 Afterwards, to-wit, on the 26th day of February 1906, the replication of complainant to the answer of George N. West was filed.

Said replication is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2997.

MISSOURI, KANSAS AND TEXAS RAILWAY COMPANY, Complainant,
vs.
JOHN A. KNOTT, et al., Defendants.

Replication of Complainant to the Answer of George N. West, and Withdrawal of Decree pro Confesso as against said Defendant.

This replicant, hereby withdrawing its decree pro confesso heretofore entered against said defendant, George N. West, and saving and reserving to itself all and all manner of advantages of exception which may be had and taken to the manifold errors, uncertainties and insufficiencies of the answer of the said defendant, for replication thereunto saith that it doth and will aver, maintain, and prove its said bill to be true, certain and sufficient in the law to be answered unto by the said defendant and that the answer of the said defendant is very uncertain, evasive and insufficient in law to be replied unto by this replicant; without that that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed, or avoided, traversed, or denied, is true; all which matters and things this replicant is ready to aver, maintain and prove as this honorable Court shall direct, and prays as in and by its said bill it hath already prayed.

JAMES HAGERMAN,
GEO. P. B. JACKSON,
JOSEPH P. BRYSON,
FRANK HAGERMAN,
Solicitors for Complainant.

Received copy of the foregoing replication, and it may be filed as of proper time.

HERBERT S. HADLEY,
Solicitor for Defendants.

115 Afterwards, to-wit, on the 26th day of February, 1906, a Motion to Refer Cause to a Master was filed. Said Motion is in words and figures as follows, to-wit:—

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 2997.

MISSOURI, KANSAS AND TEXAS RAILWAY COMPANY, Complainant,
vs.
JOHN A. KNOTT, JOSEPH P. RICE and FRANK A. WIGHTMAN, the Board of Railroad and Warehouse Commissioners of the State of Missouri, a Corporation Organized under the Laws of Missouri; Herbert S. Hadley, Attorney General of the State of Missouri, C. C. Kelly and M. P. Belch, Prosecuting Attorneys of Pettis and Cole Counties, Missouri, Respectively J. F. Parker, George West, and M. Doherty, Defendants.

The defendants, John A. Knott, Joseph P. Rice and Frank A. Wightman, Railroad Commissioners of the State of Missouri, and Herbert S. Hadley, Attorney General of the State of Missouri, pray and move the court to make an order referring this cause to one of the standing Masters of the court, or to a Special Master to be appointed by the court, under proper directions therefor, to take the evidence herein and report the same to the court, with or without findings of fact by such Master, with all convenient speed; or an order appointing an Examiner to take the testimony in the cause and return such testimony into court with all convenient speed.

HERBERT S. HADLEY,
JOHN KENNISH,
Attorney General, and
Assistant Attorney General,
Solicitors for Defendants.

SANFORD B. LADD,
Of Counsel.

116 Afterwards, to-wit, on the 27th day of February, 1906, a motion for oral hearing in open court was filed. Said motion is in words and figures as follows, to-wit:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 2988.

ST. LOUIS AND SAN FRANCISCO RAILROAD COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, and Joseph P. Rice, John A. Knott, and Frank A. Wightman, Railroad Commissioners of the State of Missouri, et al., Defendants.

No. 2989.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

No. 2990.

THE ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

No. 2991.

THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

No. 2992.

THE ST. LOUIS, KANSAS CITY & COLORADO RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

No. 2993.

THE KANSAS CITY SOUTHERN RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

117 No. 2994.

THE ST. LOUIS & HANNIBAL RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

No. 2995.

THE MISSOURI PACIFIC RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

No. 2996.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

No. 2997.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

No. 2998.

CHICAGO, BURLINGTON & QUINCY RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

No. 2999.

QUINCY, OMAHA AND KANSAS CITY RAILROAD COMPANY, Complainant,
vs.
SAME, Defendants.

No. 3000.

THE WABASH RAILROAD COMPANY, Complainant,
vs.
SAME, Defendants.

No. 3001.

THE ST. JOSEPH & GRAND ISLAND RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

118 No. 3002.

KANSAS CITY, CLINTON & SPRINGFIELD RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

No. 3003.

CHICAGO GREAT WESTERN RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

No. 3004.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

No. 3006.

THE CHICAGO & ALTON RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

Motion.

Complainant in each one of the above entitled causes moves the court to set this case down for hearing upon evidence to be adduced orally in open court on final hearing.

FRANK HAGERMAN,
Solicitor for Complainants.

The above motion may be treated as if separately made and filed in each of above cases, and due and timely notice thereof is acknowledged.

HERBERT S. HADLEY,
JOHN KENNISH,
SANFORD B. LADD,
Solicitors for the Answering Defendants.

119 Afterwards, to-wit, on the 5th day of March, 1906, the following order was filed and entered of record:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD CO., Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendants.

Also

In Equity.

RAILROAD COMPANIES
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004 and 3006.

Order.

The applications, in the nature of a motion, of the complainants for an oral hearing in open court of the evidence herein, and the motion of the defendants for a reference to a Master or the appointment of an Examiner to take the testimony herein, having been submitted to the court, and the causes being at issue, the court decides to refer the same to a Special Master.

It is accordingly ordered that the above numbered causes be, and they are hereby, referred to Frank L. Scofield, Esq., as Special Master, with directions to take the evidence orally on the issues involved, and to report his findings of facts thereon to the court at the earliest time practicable, together with the evidence in the causes.

(1) He shall so hear, and only until the court otherwise orders, such above numbered causes as the parties by their counsel shall at the beginning of the inquiry agree to be heard.

120 (2) The Special Master, on reasonable notice, by mail, or otherwise, deemed by him most advisable, to the counsel of the respective parties, shall fix the times and places for the taking of testimony, and he is authorized to fix the same as to him may seem most convenient to the parties in interest, having regard to the suitability and necessity of such times and places.

(3) The Special Master is authorized to employ a competent and reliable stenographer, whose compensation shall be determined by the court, to take down the testimony and reduce the same to writing.

(4) The court directs that the Special Master shall proceed, after the beginning of the taking of testimony, with all reasonable speed, as it is important to all concerned that the hearing of the causes

shall be expedited. To this end, the Special Master will require respective counsel to present their testimony promptly, and confine the same to the issues involved, in order to avoid, as far as practicable, the growing evil in practice before Masters of unduly burdening the record with irrelevant and immaterial matters and the litigants with unnecessary costs.

(5) The Special Master shall permit any pleadings to be amended as by Equity Rule provided, and rule upon the admissibility of any evidence, and may refer to the court any question which arises before him in the progress of the hearing.

(6) The Clerk of this court will forthwith furnish the said Special Master with a certified copy of this order, and without further or special order turn over to said Special Master, taking his receipt therefor, any pleadings or court papers pertaining to the causes being investigated by him, on his request made therefor.

(Signed) JNO. F. PHILIPS, *Judge.*

121 Afterwards, towit, on the 22 day of March A. D. 1906, the answer of M. Doherty was filed.

Said answer is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 2997.

MISSOURI, KANSAS AND TEXAS RAILWAY COMPANY, Complainant,

vs.

JOHN A. KNOTT, JOSEPH P. RICE, and FRANK A. WIGHTMAN, the Board of Railroad and Warehouse Commissioners of the State of Missouri, a Corporation Organized Under the Laws of Missouri; Herbert S. Hadley, Attorney General of the State of Missouri; C. C. Kelly and M. P. Belch, Prosecuting Attorneys of Pettis and Cole Counties, Respectively; J. F. Parker, George West, and M. Doherty, Defendants.

Answer of Defendant M. Doherty to the Bill of Complaint of the Missouri, Kansas and Texas Railway Company, Complainant.

This defendant now and at all times hereafter saving to himself all and all manner of benefit of exception or otherwise, that can or may be had or taken to the many errors, uncertainties and imperfections in the said bill contained, for answer thereto, or to so much thereof as this defendant is advised it is material or necessary for him to make answer to, answering says:

I.

He admits the averments contained in paragraph I of said bill of complaint.

II.

As to whether said Act of 1905 is unconstitutional for any reason, this defendant has no knowledge, information or belief. All the other averments of paragraph II of said bill of complaint, this defendant admits.

122

III.

He admits each and every of the averments contained in paragraph III of said bill of complaint, except in this respect: This defendant has no knowledge, information or belief as to the duties which the Railroad Commissioners or the Attorney General are required by law to do or perform.

IV.

He admits the averments contained in paragraph IV of the bill of complaint, except in this particular: He has no knowledge, information or belief as to whether he represents any class of shippers

V.

He admits all the averments contained in paragraph V of the bill of complaint, with these exceptions, to-wit: He has no knowledge, information or belief as to what the statutes of the State provide in respect of the duties of the Railroad Commissioners, or of any prosecuting attorney or of the Attorney General.

VI.

He admits each and every of the averments of paragraph VI of the bill of complaint.

VII.

He admits that the legislature of the State of Missouri, at its session of 1905, passed the Act called in said bill of complaint, the Act of 1905.

As to whether shippers along the line of complainant's railroad are numerous, or daily engaged in making or receiving shipments of freight of the special classes designated in the Act of 1905, this defendant has no knowledge, information or belief. He
123 denies that he was intending or proposing to institute against the complainant any suit whatever to recover of the complainant any damages or any attorneys' fees. He has no knowledge, information or belief as to whether any other shipper is interested with this defendant, and he denies that he should defend for any such person.

As to each and every other allegation contained in said paragraph VII of the bill of complaint, this defendant says that he has no knowledge, information or belief.

VIII.

As to the truth of the averments and each of them, contained in paragraph VIII of said bill of complaint, this defendant says that he has no knowledge, information or belief.

IX.

This defendant has no knowledge, information or belief as to the truth of the averments, or any of them, contained in paragraph IX of said bill of complaint.

X.

This defendant has no knowledge, information or belief as to the truth of the averments, or any of them, contained in paragraph X of said bill of complaint.

XI.

This defendant has no knowledge, information or belief as to the truth of the averments, or any of them, contained in paragraph XI of said bill of complaint.

XII.

This defendant has no knowledge, information or belief as to the truth of the averments, or any of them, contained in paragraph XII of said bill of complaint.

124 XIII.

This defendant has no knowledge, information or belief as to the truth of the averments, or any of them, contained in paragraph XIII of said bill of complaint.

XIV.

This defendant, further answering, says that he is not a proper party defendant to the said bill of complaint, and that he has been improperly joined as a defendant herein; that there is no equity in said bill as against this defendant, and that in any event no costs ought to be adjudged herein against him.

This defendant denies that the complainant is entitled to any relief whatever against this defendant, without this, that any other matter, cause or thing in the complainant's said bill of complaint contained, material or necessary for this defendant to make answer unto, and not herein or hereby well and sufficiently answered, confessed, traversed and avoided, or denied, is true, to the knowledge or belief of this defendant; all which matters and things this defendant is ready and willing to aver, maintain and prove, as this honorable court shall direct, and humbly prays to be hence dismissed

with his reasonable costs and charges in this behalf most wrongfully sustained.

HERBERT S. HADLEY,
Attorney General;
JOHN KENNISH,
Assistant Attorney General,
Solicitors for Defendants.

SANFORD B. LADD,
Of Counsel.

125 In order to avoid unnecessarily encumbering the record, it is agreed that admission-, denials and averments of want of knowledge, information and belief, contained in the foregoing answer, shall be taken and considered in every stage of this suit, with the same force and effect as if such admissions, denials or averments had mentioned specifically and in the language of the bill of complaint, the allegations thereof, which they are respectively intended to meet; that such admissions, denials and averments as to a number of allegations, as a whole, contained in the bill of complaint, shall have the same force and effect as if each of such allegations had been specifically referred to in the language of said bill of complaint.

FRANK HAGERMAN,
Solicitor for Complainant.
HERBERT S. HADLEY,
Attorney General;
JOHN KENNISH,
Assistant Attorney General,
Solicitors for Defendant.

SANFORD B. LADD,
Of Counsel.

126 Afterwards, towit, on the 23rd day of March, 1906, the replication of complainant to the answer of M. Doherty was filed.

Said replication is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 2997. In Equity.

MISSOURI, KANSAS AND TEXAS RAILWAY COMPANY, Complainant,
vs.
JOHN A. KNOTT et al., Defendants.

Replication of Complainant to the Answer of M. Doherty and Withdrawal of Decree Pro Confesso as against said Defendant.

This replicant, hereby withdrawing its decree pro confesso heretofore entered against said defendant, M. Doherty, and saving and re-

serving to itself all and all manner of advantages of exception which may be had and taken to the manifold errors, uncertainties and insufficiencies of the answer of the said defendant, for replication thereunto saith that it doth and will aver, maintain, and prove its said bill to be true, certain and sufficient in the law to be answered unto by the said defendant and that the answer of the said defendant is very uncertain, evasive and insufficient in law to be replied unto by this replicant; without that that any other matter or thing in the said answer contained, material or effectual, in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed, or avoided, traversed, or denied, is true; all which matters and things this replicant is ready to aver, maintain and prove as this honorable Court shall direct, and prays as in and by its said bill it hath already prayed.

FRANK HAGERMAN,
Solicitors for Complainant.

Received a copy of foregoing replication, and it may be filed as of proper time.

HERBERT S. HADLEY,
Attorney General;
JOHN KENNISH,
SANFORD B. LADD,
Solicitors for Defendants.

127 Afterwards, to-wit, on the 11th day of June, 1907, a Motion was filed. Said Motion is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2988.

St. Louis & San Francisco Railroad Co., Complainant,
vs.
Herbert S. Hadley, Attorney General of the State of Missouri, et al., Defendants.

Also

In Equity.

Railroad Companies
vs.
Herbert S. Hadley, Attorney General of the State of Missouri, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004 and 3006.

Motion.

Now comes complainant in each of the above entitled causes and moves the court for leave to file an amended and supplemental bill

seeking to enjoin the enforcement of the various acts of the legislature regulating rates adopted at the session of 1907, and making as additional parties defendant H. R. Oglesby, Railroad Commissioner, and the county judges and treasurers of the counties through which each of the complainant's lines run, together with citizens traveling upon the road of each complainant as passengers, all as will be more fully shown by the amended and supplemental bill to be presented upon the hearing of this motion.

FRANK HAGERMAN,
Solicitor for Complainants.

128 Afterwards, to-wit, on the 13th day of June, 1907, the following restraining order was filed and entered of record:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2997.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendants.

Order.

The complainant upon this June 13th, 1907, asked, pending a hearing of the application to file an amended and supplemental bill, the general form of which has been submitted to the court, the right to temporarily file same and for a restraining order, but in as much as said application to file the bill for temporary injunction has been set and noticed for hearing upon June 14th, 1907, at the first time convenient to the court, and it appearing to the court that it is desirable that a full argument be had after notice, yet that great harm might be done and much confusion arise if the status quo should be changed, and that it is to the best interest of the public and all parties interested that such status quo should be maintained until such hearing, it is therefore, upon the court's own motion, ordered that until further order herein, the complainant, its officers, agents and employés be and they are hereby restrained from putting in force the maximum freight and passenger rates provided by the legislative acts of 1907 mentioned in said bill and from complying with said acts, and the application for a restraining order will be heard with that for leave to file said amended bill.

(Signed) SMITH McPHERSON, *Judge.*

129 Afterwards, to-wit, on the 14th day of June, 1907, the following order was filed and entered of record, to-wit:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 2997.

MISSOURI, KANSAS & TEXAS RY. CO., Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendants.

Order.

The complainant upon this June 14th, 1907, presented its amended and supplemental bill, and asked leave to file the same and for a restraining order or temporary injunction. The Court was advised by the Assistant Attorney General, who appeared, that the Attorney General is absent and desired to be heard, and in the meantime, that suits were this day by the Attorney General instituted in the Circuit Courts of the State to require the various railroad companies of the State to put in force the rates fixed by the acts of the Legislature mentioned in the bill. It is thereupon ordered that the matter be set down for hearing upon the 15th day of June, 1907, at 2 o'clock p. m., and the supplemental bill herein shall be deposited with the clerk. And it appearing to the court that it is desirable that a full hearing be had of the various matters, yet that great harm might be done and much confusion arise if the status quo should be changed, and that it is to the best interest of the public and all parties interested that such status quo should be maintained until such hearing, it is therefore, upon the Court's own motion, again ordered that until further order herein, the complainant, its officers, agents, and employés, be and they are hereby restrained from putting in
130 force the maximum freight and passenger rates provided by the legislative acts of 1907 mentioned in said bill and from complying with said acts, and the application for a restraining order and temporary injunction will be heard with that for leave to file said amended bill.

(Signed) SMITH McPHERSON, *Judge.*

131 Afterwards, to-wit, on the 15th day of June, 1907, a Notice was filed. Said Notice is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD CO., Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendants.

Also

In Equity

RAILROAD COMPANIES
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004 and 3006.

Notice.

To Defendants and their counsel:

Complainants will at the court room at Kansas City, Missouri, upon June 14th, 1907, at ten o'clock A. M., or as soon as counsel can be heard, ask leave of court to file an amended and supplemental bill in each of the foregoing cases, in substantial form shown by copy hereto attached, and at the same time ask for a temporary injunction.

FRANK HAGERMAN,
Solicitor for Complainants.

Received copy of this notice June 11, 1907.
HERBERT S. HADLEY,
Solicitor for Defendants.

132 Afterwards, to-wit, on the 17th day of June, 1907, the following order was filed and entered of record, to-wit:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 2997.

MISSOURI, KANSAS & TEXAS RY. COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendants.

Order.

This cause came on for hearing this 17th day of June, 1907, the parties appearing by their counsel in response to notice and the court being fully advised in the premises, orders and adjudges:

1. Complainant's motion for leave to file an amended and supplemental bill is sustained and such leave is given, the same to be filed as of June 11th, 1907.

Upon such filing, process shall be issued so that if the court hereafter decides that the ends of justice require, and the rules of equity permit, the said bill may be treated as an amended, supplemental, ancillary, dependent or original bill.

To said bill, each of the parties named therein shall be and is hereby made a party.

2. Complainant's application for a temporary injunction is, as to the maximum freight laws of 1907, sustained. Until the further order of court herein, the defendants and each of them are enjoined from doing any act, attempting to recover any penalty, seeking to enforce or having enforced, or asserting any claim or right under or by virtue of the maximum freight rate acts of 1907 mentioned in said amended and supplemental bill, to the end that each defendant as to each of said acts of 1907 be restrained as effectually as the defendants were enjoined by the temporary injunction hereto-
133 fore issued herein as to and in connection with the act of 1905.

By consent of complainant, the injunction bond heretofore filed shall stand as applicable to this order the same as if it were executed and filed this day.

3. As to the passenger act of 1907, the order heretofore entered upon the court's own motion, shall remain in force until June 19th, 1907, at six o'clock a. m., at which time the rates fixed by said act shall be put and kept in force for three months without prejudice to the rights of either party for the purpose of ascertaining more definitely the extent that experience will show that the rates under said act reduce or increase the earnings of complainant.

The court reserves the power upon the application of any person interested, to hereafter make such further or other order upon this subject as it deems proper.

4. Pending the further hearing and final determination of this case, the complainant shall preserve and keep in existence its waybills for state freight.

(Signed) SMITH McPHERSON, *Judge.*

134 On the 11th day of June, 1907, an amended and supplemental bill of complaint was filed. Said amended and supplemental bill of complaint is in words and figures as follows, to-wit:—

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2997.

MISSOURI, KANSAS AND TEXAS RAILWAY CO., Complainant.
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendants.

Complainant's Amended and Supplemental Bill.

To the Honorable Judges of the Circuit Court aforesaid:

Your orator, by leave of court, brings this, its amended bill, and thereupon avers:

1. Upon the 16t' day of June, 1905, it filed herein against the Defendants in the above entitled case its original bill, (reference to which is now made the same as if copied herein) seeking to enjoin as illegal, unconstitutional and confiscatory the enforcement of the provisions of an act of the legislature of the State of Missouri (herein called the "Act of 1905"), seeking to fix certain maximum freight rates.

2. The said legislature also passed in 1905 an act approved April 14, 1905, in words and figures as follows:

"Corporations, Private: Railroad Classification, Charges—Commissioners.

An Act to amend Article IV, Chapter 12, of the Revised Statutes of Missouri of 1899, entitled 'Railroad Classification, Charges, Commissioners,' by adding a new section thereto, to be known as Section 1195*a*.

SECTION 1. Fixing charges for carrying undressed stone, crushed rock and building or paving brick.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION 1. That Article IV, Chapter 12, of the Revised Statutes of Missouri of 1899, entitled 'Railroad Classification, Charges, Commissioners,' be, and the same is hereby amended by adding a new section thereto, to be known as Section 1195*a*, to read as follows:

SECTION 1195*a*. No individual, company or corporation owning, operating, managing or leasing any railroad or part of a railroad in this State, shall charge for or receive for carrying a carload of forty thousand pounds of undressed stone, sand or building or paving bricks more than forty cents per ton for the first ten miles, twenty cents per ton for the second ten miles, or more than five cents per ton for each additional ten miles, and any excess in weight shall be charged for at the same rate per ton as for an even carload.

Approved April 14, 1905."

135

3. Since the filing of said original bill and upon or about January 1, 1907, the office of the said Joseph P. Rice as a railroad and warehouse commissioner expired by limitation of the time for which he was elected and H. R. Oglesby has been duly elected and qualified, as his successor, and is now acting as such. It is, therefore, proper that he should be made a party defendant hereto.

4. Each of the railroad companies operating railroads in the state of Missouri at the same time filed in this court original bills to the same purport and for the same purpose, against said members of the Railway and Warehouse Commissioners and the Attorney
136 General and certain shippers upon the line of its road. Such proceedings were had therein that temporary injunctions were issued, the causes were put at issue and duly referred to the Honorable Frank L. Schofield to take certain proofs and make certain findings of fact. The parties agreed that before taking the evidence in all the cases, they would first take that in three of them, temporarily suspending the taking of further testimony in the others. In accordance with said agreement the evidence was taken in the three cases instituted by the Missouri Pacific, Wabash and Chicago, Burlington & Quincy Railway Company, and the said causes are now ready for submission to the special master upon the original bills so filed, and have been set for argument before him upon June 18, 1907.

5. The Governor of the State, in giving his written reasons for approving the Act of 1905, indicated that it was with some reluctance that he signed same, expressly stating that "the rate on live stock seems unjust." So at the time of submitting his biennial general message to the 43rd General Assembly of the State, he called attention to the litigation aforesaid, and suggested a modification and amendment of the law to meet fatal defects therein. Thereafter, on February 27, 1907, he sent a special written message to the legislature, in which, among other things, he said in reference to the Act of 1905:

"The statute enacted by the last General Assembly is defective in the penalty clause, which applies only to railroads. The penalty should be made to apply to persons, corporations, and partnerships. The cattle clause should be corrected in the light of the testimony adduced in the freight litigation so as to fix these rates at an amount that will stand the test of the judicial crucible."

6. Pursuant to this request and the acknowledgment thus made of the invalidity of the existing law, the enforcement of which was sought to be enjoined by the original bill, the legislature passed an act (herein called the Act of 1907) which will take effect on June 14, 1907, in words and figures as follows:

137 "Corporations, Private: Railroads—Freight Charges.

An Act to repeal an act of the 43rd general assembly, approved April 15, 1905, entitled 'An act to amend Chapter 12 of the Revised Statutes of Missouri, revision of 1899, entitled "Corporations, private," by repealing section 1194 of said Revised Statutes, being part of article IV of said chapter, concerning railroad classification, charges, commissioners, and to enact in lieu thereof the following new sections providing for the regulation of freight charges by railroads and the recovery of penalties for the violation thereof,' and to repeal an act of the 43rd General Assembly, approved April 14, 1905, entitled 'An act to amend article IV, chapter 12, of the Revised Statutes of Missouri, 1899, entitled "Railroad classifications, charges, commissioners," by adding a new section thereto, to be known as section 1195*a*, fixing the charges for carrying undressed stone, crushed rock and building or paving brick,' and to enact in lieu thereof certain new sections, to be known as sections 1194, 1194*a*-1, 1194*b*-1 and 1194*c*-1, providing for the regulation of freight charges by railroads and prescribing the punishment for a violation thereof, which new sections shall read as follows:

SECTION 1194. Classification and charges for carrying freight in car load lots.

SECTION 1194*a*. Penalty for violation.

SECTION 1194*b*. Not to relieve railroad from complying with other laws.

SECTION 1194*c*. Repealing conflicting acts.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION 1. That sections 1194, 1194*a* and 1194*b* of an act of the 43rd general assembly, approved April 15, 1905, concerning railroad classifications, charges, commissioners, and providing for a penalty for a violation thereof, said sections being enacted in lieu
138 of section 1194, chapter 12, of the Revised Statutes of Missouri, 1899, in "corporations, private," and section 1195*a* of an act of the 43rd general assembly, approved April 14, 1905, concerning railroad classifications, charges, commissioners, fixing charges for carrying undressed stone, crushed rock and building or paving brick, be and the same are hereby repealed, and the following, to be known as sections 1194, 1194*a*-1, 1194*b*-1, and 1194*c*-1 of said Revised Statutes are enacted in lieu thereof.

SECTION 1194. No individual, company or corporation owning, operating, managing or leasing any railroad, or part of railroad, designated in section 1191 as in classes A, B, or C, shall demand, charge or receive a greater or higher rate for carrying from initial to terminal points in this state articles named in the several classes and the commodities herein designated than is hereinafter provided for, namely: Class D, in car loads of 40,000 pounds minimum weight, not exceeding five cents per one hundred pounds for the first twenty-five miles, and not exceeding one-half cent per hundred

pounds for the second twenty-five miles, or fractional part thereof, and not exceeding one-half cent per hundred pounds for each additional twenty-five miles or fractional part thereof. Class E, in car loads of 24,000 pounds minimum weight, not exceeding five cents per one hundred pounds for the first twenty-five miles, and not exceeding one-half cent per hundred pounds for the second twenty-five miles or fractional part thereof, and not exceeding one-half cent per hundred pounds for each additional twenty-five miles or fractional part thereof. Class F, in car loads of 30,000 pounds minimum weight, not exceeding five cents per one hundred pounds for the first twenty-five miles, and not exceeding one-half cent per hundred pounds for the second twenty-five miles or fractional part thereof, and not exceeding one-half cent per hundred pounds for each additional twenty-five miles or fractional part thereof. Class G, in car loads of 30,000 pounds minimum weight, not exceeding five cents per one hundred pounds for the first twenty-five miles, and not ex-
139 ceeding one-half cent per hundred pounds for the second twenty-five miles or fractional part thereof, and not exceeding one-half cent per hundred pounds for each additional twenty-five miles or fractional part thereof. Class H, in car loads, in common cars, measuring inside from 29 feet to and including 30 feet and 6 inches in length (to be known as standard cars), not exceeding $8.00 per car load for the first twenty-five miles, and not exceeding $4.00 per car load for the second twenty-five miles or fractional part thereof, and not exceeding $2.00 per car load for each additional twenty-five miles or fractional part thereof of over twelve miles. For the carriage of any of the articles comprising class H, in cars of other lengths for the distances above specified, the following percentages of the foregoing rates per car load shall not be exceeded, namely: In cars of length less than 29 feet, 94 per cent; in cars of length over 30½ feet to and including 32 feet, 104 per cent; in cars of length over 32 feet to and including 33 feet and 9 inches, 107 per cent; in cars of length over 33 feet and 9 inches to and including 36 feet, 110 per cent; in cars of length over 36 feet to and including 38 feet 113 per cent; in cars of length over 38 feet to and including 40 feet, 116 per cent; in cars of length over 40 feet to and including 42 feet, 125 per cent; in cars of length over 42 feet to and including 44 feet, 135 per cent; in cars of length over 44 feet, 140 per cent of the rates herein specified for cars of the standard length of 29 feet to and including 30 feet and 6 inches shall not be exceeded. All the foregoing lengths to be taken by inside measurements. Class 1, in car loads of 20,000 pounds minimum weight, not exceeding $14.00 per car load for the first twenty-five miles, and not exceeding $2.00 per car load for the second twenty-five miles or fractional part thereof, and not exceeding $2.00 per car load for each additional twenty-five miles or fractional part thereof. For a car load of 40,000 pounds of minimum weight undressed stone, crushed rock, sand, railroad ties, cordwood, building or paving brick, not exceeding 40 cents
140 per ton of 2,000 pounds to the ton for the first fifty miles or fractional part thereof, and not exceeding five cents per ton per car load for the next ten miles or fractional part thereof, and not

exceeding 5 cents per ton per car load for each additional ten miles or fractional part thereof. In computing the rate of freight, according to the provisions of this article, the distance shall be computed from the point where it is received to the point of destination in the state, nowithstanding it may pass from one road to another.

SECTION 1194*a*. Any individual, company or corporation owning, operating, managing or leasing any railroad, or part of railroad, designated in section 1194, or any officer, agent, representative or employee thereof who violate- the provisions of section 1194, shall be adjudged guilty of a misdemeanor and, on conviction, shall be punished by a fine of not to exceed $5,000.00. Provided, that the money received from any fine under the provisions of this act shall be paid into the school fund in the county in which the case is prosecuted.

SECTION 1194*b*. This act shall not have the effect of relieving any person, partnership or corporation, owning or operating any railroad in this state form any liability or penalty heretofore incurred for failure to comply with any law of this state.

SECTION 1194*c*. All acts and parts of acts, and all rules and regulations, freight schedules, classifications and groupings, by railroad companies, or the railroad and warehouse commissioners of this state, in conflict with the provisions of this act are hereby repealed and declared void.

Approved March 19, 1907."

By this act an attempt was made to comply with the request of the Governor and to repeal the said Act of 1905, together with that mentioned in paragraph 3 hereof, with the exception that no penalty or liability incurred should be affected by such repeal, the purpose and intention of defendants being to attempt to enforce against your orator all penalties which accrued if the said acts are held to be illegal.

141 7. In addition thereto, the legislature in 1907 passed certain acts which will take effect upon June 14, 1907, being in words and figures as follows:

"Corporations, Private: Railroads—Freight Charges.

An Act to Amend Article 4, Chapter 12, Revised Statutes of Missouri of 1899, by Adding a New Section Thereto, to be Known as Section 1195*a*, and Relating to Freight Charges and Classifications.

SECTION 1. Fixing freight charges on fruits.
SECTION 2. Inconsistent acts repealed.
SECTION 3. Penalty for violation.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION 1. That article 4, chapter 12, of the Revised Statutes of Missouri, 1899, entitled 'Railroad classification, charges, commissioners,' be and the same is hereby amended by adding a new sec-

tion thereto, to be known as section 1195*a*, which said section shall read as follows:

SECTION 1195*a*. No individual, company or corporation, owning, operating, managing or leasing any railroad or part of railroad in this state, shall charge for or receive for carrying apples and pears in car loads of 24,00(0) pounds minimum weight, more than six cents per hundred pounds for the first twenty-five miles or fractional part thereof, and not more than one cent per hundred pounds for each additional twenty-five miles or fractional part thereof. For strawberries, peaches, grapes, and other berries in car loads of 18,000 pounds minimum weight, not exceeding fifteen cents per hundred pounds for the first twenty-five miles or fractional part thereof, and not exceeding two cents per hundred pounds for each additional twenty-five miles or fractional part thereof.

SEC. 2. All acts and parts of acts and all rules and regulations, freight schedules, classification(s) and grouping(s) by rail-
142 road(s) companies, or the railroad and warehouse commissioners of this state, in conflict with the provisions of this act, are hereby repealed and declared void.

SEC. 3. Any individual, company or corporation owning, operating, managing, or leasing any railroad or part of a railroad in this state, violating the provisions of this act, shall, on conviction, be adjudged guilty of a misdemeanor and subject to a fine of not to exceed one thousand dollars for each offense.

Approved March 19, 1907."

"Corporations, Private: Railroads.

An Act to Provide Transportation on Railroads for the Shippers of Freight in This State in Carload Lots.

SECTION 1. Railroads to issue to certain shippers transportation.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION 1. Whenever any railroad company or corporation doing business within the limits of this state shall receive any live stock to be shipped over the said road or roads by carload lots, said corporation shall, in consideration of the price paid for said carload lots, issue to the shipper, his agent or employee, at the time of making out the contract or bill of lading, a round trip ticket to and from said points designated in said bill of lading, without further expense to said shipper, provided that the points of destination are within this state, and in case said point of destination is without this state, then said railroad corporation shall issue to such shipper, his agent or employee, a round trip ticket to a point within this state nearest to the point without this state to which said shipment of live stock is shipped; provided, that in case said shipper shall ship more than one car load at any one shipment the said railroad corporation shall not be compelled to give to said shipper

more than one round trip ticket with such shipment, which
143 said ticket shall be good on the freight train on which said stock is shipped, and on all trains on said road carrying passengers on the return trip, and shall be good for a period of ten days, and any railroad company or corporation wilfully violating the provisions of this section, or which shall fail, neglect or refuse to furnish and deliver such ticket to such shipper, his agent or employee, shall forfeit and pay, as a penalty, to said shipper, not less than three hundred dollars nor more than five hundred dollars, to be recovered by civil action in any court of compentent jurisdiction.

Approved April 4, 1907."

8. All the averments of the original bill apply to the said act of 1907 and also to each of the acts mentioned in paragraph 7 hereof, except that if for the classes of freight mentioned in the said Acts of 1907 alone, or in all the Acts of 1907, your orator should charge the maximum rate therein authorized and practically capable of being charged, its total gross receipts from state traffic would be reduced in a very large sum, which though differing in items would not be as a whole substantially less than that mentioned in the original bill as to the Act of 1905. Each of said freight Acts of 1907 is violative of the provisions of the constitution to the same extent as was alleged as to the Act of 1905. But the freight Acts of 1907 did not so correct the evils of the former laws as set forth in the original bill, and the rates were thereby fixed at amounts that were unreasonable and confiscatory, and less than the cost of the service.

9. The Governor in calling for the passage of said Act of 1907, and the legislature in passing the same, did so for the avowed purpose of increasing certain of the maximum rates of the Act of 1905 which they conceived had in this litigation been proved to be unreasonable and confiscatory and could not be enforced. Notwithstanding this, the rates as finally so fixed, considered alone, were not upon such a basis as would return any reasonable or fair compensation to the complainant upon the value of that portion
144 of its property devoted to such use. Even if the laws in existence in 1905 relative to passenger fares, had remained in force, still the freight rates as fixed by the said Acts of 1907 would have been unreasonable and confiscatory, and would not have given any just return upon the value of that portion of your orator's property as a whole devoted to state traffic. However, the legislature of the state, without any fixed or definite knowledge upon the subject of rates, erroneously conceived that if the increase as aforesaid in the freight rates were necessary and were made, there could be a general equalization of rates by a decrease in the passenger rates and so in substance they could legally overcome and offset any advantage from the increase in freight rates by decreasing the maximum rates to be charged for state passenger traffic about thirty-three and one-third per cent, and thus, while defeating pending litigation, the public as a whole would not be the loser. The result

was that at the same session, and as part and parcel of one transaction, and substantially as one law, and to accomplish such purpose, there was passed and the Governor approved, an act herein called the "Passenger Act," which if valid, will take effect on June 14, 1907. The same reads as follows:

"Corporations, Private: Railroads—Passenger Rates.

An act to repeal sections 1191 and 1192 of chapter 12, article 4, Revised Statutes of Missouri, 1899, entitled 'Railroad classification—charges—commissioners,' by striking out sections 1191 and 1192 and enacting the following new sections in lieu thereof, to be known as sections 1191 and 1192 and 1192*a*.

SECTION 1191. Classification of railroads.
SECTION 1192. Passenger charges regulated.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION 1. That all of sections 1191 and 1192 of chapter 12, article 4 of the Revised Statutes of Missouri, 1899, be and the same are hereby repealed and three new sections be enacted in lieu thereof, to be known as sections 1191 and 1192 and 1192*a*, so that said sections shall read as follows:

SECTION 1191. Roads classified.—All railroads in the state of Missouri are hereby divided into four classes, to be known as class A, class B, class C and class D. Class A shall include all through or trunk line railroads and all branch roads owned, leased, controlled or occupied by such through or trunk line railroad companies or corporations. Class B shall include all other railroads or parts of railroads owned, leased, controlled or occupied or which may hereafter be owned, leased, controlled or occupied, either wholly or in part, by any trunk line company or corporation. Class C shall include all other railroads of a greater length than forty-five miles. Class D shall include all roads less than forty-five miles in length not owned, leased, controlled or occupied by any trunk line company or corporation.

SECTION 1192. Passenger charges regulated.—Any individual, company or corporation owning, operating, controlling or leasing any railroad or part of a railroad in this state, in the several classifications as herein prescribed, shall be limited to a compensation per mile, for the transportation of any person with ordinary baggage not exceeding one hundred pounds in weight, as follows: In classes A, B & C not exceeding two cents per mile and in class D not exceeding four cents per mile: Provided, that no such individual, company or corporation shall charge, demand or receive any greater compensation per mile for the transportation of children of the age of twelve years or under than one-half of the rate above prescribed; and provided further, that the rates for transportation herein prescribed may be reduced, as hereinafter provided.

SECTION 1192*a*. Any individual, company or corporation or any

agent, or officer thereof, who shall violate any of the provisions of section 1192 of this act, shall be deemed guilty of a misdemeanor, and upon conviction, shall pay a fine of not less than one hundred nor more than five hundred dollars.

Approved February 27, 1907."

146 10. All the averments of the original bill apply to said Passenger Act. It is violative of each constitutional provision mentioned, and subject to each objection made, in the original bill to the Act of 1905, and all the facts there averred as to why the Act of 1905 should be held to be void and action thereunder restrained, are not only true as to the Acts of 1907, but also as to said Passenger Act. If enforced, it will reduce the earnings of your orator from said passenger business in the practical and ordinary operation of its road, substantially one-third. The state passenger earnings for the year 1906 were in the aggregate substantially Four hundred thousand dollars, and yet, if the Passenger Act as aforesaid had been applied thereto, said earnings would have been reduced at least to the sum of two hundred and eighty thousand dollars or an annual loss of one hundred and twenty thousand dollars. The property of your orator in the state is used as a whole both for state and interstate freight and passenger business, and, as such, in quite valuable. The value of that portion devoted to the carriage of state business considered as a whole, or separately, as to the passenger business only, is such that in either case the reduction in rates by said Passenger Act would not only fail to make any reasonable return on such valuation, but would cause such business to be done at an actual loss.

11. The said Passenger Act was passed for the avowed purpose of reducing the state passenger rates of your orator so as to offset and overcome a supposed increase of certain of the state freight rates made under the Act of 1907, and the attempt was made to frame each act so as to avoid the injunctive relief in this and in each action heretofore instituted by the other railroad companies operating lines in Missouri. As your orator is informed and believes, the

147 state and defendants now unjustly and improperly claim that since upon the face of these acts provision is only made for general penalties, there is no remedy by injunction; that the original bill can no longer be maintained, and that the state through its officers is entitled to have enforced the various statutory penalties for each shipment made and each passenger carried at a rate in excess of that fixed by the freight Acts of 1907 and the said Passenger Act, as well as penalties under the abandoned Act of 1905.

As to said contentions, your orator respectfully submits:

(*a*) Such view, if adopted, would result in a multiplicity of suits, the harassment of your orator, and tedious and expensive litigation, because if an injunction be not herein granted, and said acts be not complied with, many suits and prosecutions will be brought and many fines and penalties imposed and no opportunity will be afforded to your orator to present its claim of the unconstitutionality of said act and the confiscatory nature of the rates fixed. Such an inquiry

involves the examiantion of long and tedious accounts, the study of books and papers and an expert knowledge of the trier of fact, none of which could be properly had in the many trials to be had in a court of law to enforce the penalties. Hence the result would be pending the inquiry, your orator would be required to put in and enforce said rates to its irreparable damage, because it would be compelled, pending the litigation, to carry traffic at the reduced rates with no practicable way of recovering the difference between the rates now charged and as so reduced.

(*b*) The real purpose of the original bill was to determine whether that portion of the property of your orator devoted to state business could, if the Act of 1907 were enforced, receive such return upon its value as would be fair, reasonable and not confiscatory. Upon the trial of the three cases heard by the special master, such was the theory adopted by both parties, and the proofs were by both of them directed to that end. In view of this situation, it is respect-
148 fully submitted that the full determination of all questions of rates in the pending cases can not be defeated or impaired by the repeal by the state legislature of the particular act questioned by the original bill and the passage of another and different act in such form as to prevent any adequate relief from a court of equity and to remit a complainant to a defense in numberless actions of law to recover penalties. But if the rights of the parties should be ascertained by a court of equity, this can be done adequately through the injunctive process, surrounded and controlled by such conditions as may be proper and just in the premises.

(*c*) It would be unjust and inequitable to permit officers of the state to claim that the validity of an act alleged to be confiscatory in its nature should be determined in a way other than would afford a full and fair hearing, which can only be by the processes of a court of equity. In order that there may be the fullest and fairest hearing of the controversy, your orator consents that any state officer, or any provate person or corporation may appear herein and show, if they can, why the rates fixed in the acts aforesaid are lawful, reasonable or enforcible, and that the court may make any reasonable order to protect the public and speed the hearing.

(*d*) Each of the special duties devolving upon the members of the Board of Railroad Commissioners and the Attorney General as stated in the original bill, applies to the Acts of 1907, and the Passenger Act aforesaid, so that even as an original bill, this proceeding could be maintained.

(*e*) The constitution of the state provides that all penalties such as are attempted to be prescribed for the violation of the acts herein mentioned go to the school fund of the various counties, and the statutes of the state impose the special duty of collecting the same and preserving and investing the proceeds thereof, upon the county court and the treasurers of the respective counties of the state
149 C. W. McAninch, I. N. Danforth and A. L. Haggard are the judges of the county and L. V. Ware is treasurer, and each is a resident and citizen of the county of Pettis, Missouri, through which the line of your orator passes, and from and to which there

is transported a very large part of the state and passenger traffic, the maximum rates for carriage of which are fixed by said Acts of 1907 and said Passenger Act. Each of said judges and said treasurer is hereby made a defendant. Each proposes and intends and will unless restrained herein, seek to enforce and collect the penalties provided for in the said acts. In view of the fact that the line of your orator's road is not confined to one county, it is inconvenient impracticable, expensive, and hence, unnecessary to make the county judges and the treasurer of each county parties hereto, but such as are named can be, and are sued as a class so that others similarly situated may, if they desire, appear herein and be heard upon their own behalf or through those now made parties, or, if necessary, be brought in by process of court and required to make defense.

(*f*) John T. Heard and Elijah E. Johnston are citizens and residents of Pettis county, Misouri, who constantly travel over your orator's road, who have demanded and supported the passage of the Passenger Act aforesaid and threaten to and will seek to enforce its provisions unless the rates therein fixed are established and put in force. They are hereby made defendants, and they represent a class of passengers and travelers so numerous that it is impracticable to join them all, and those named are made defendants herein for the purpose of determining, as against your orator, the rights of the entire traveling public under the said Passenger Act.

12. The rates fixed by each the said Acts of 1907 and said Passenger Act and as a whole are so unreasonable and confiscatory that a compliance therewith will force an unreasonable reduction and confiscation of your orator's entire revenue contrary to the pro-
150 visions of the fourteenth amendment to the constitution of the United States and provisions of the constitution. Besides this, to enforce the rates so fixed in any of said acts would necessarily affect the interstate rates upon the same commodities. Owing to the peculiar geographical location of the State of Missouri, the state rates necessarily affect all interstate rates upon the same commodities and travel and this results as a practical and unavoidable matter in the conduct of business affairs, the location of markets, business houses, the extent of territorial distribution from the various cities in the state and the necessities of travel. In addition to this some of the chief lines of railroad in Missouri, in running to and from points therein, pass out of the state so as to make any transportation between such points interstate commerce. Hence when a state rate between such points when lines wholly within the state is fixed lower than the interstate rate the companies whose transportation is interstate must meet that rate or carry none of the traffic. Such traffic constituted a very substantial portion of the entire state traffic. Congress has attempted to legislate upon the subject of interstate rates, and since as a matter of fact none of said state rates can be enforced without affecting interstate rates, all of the said legislative acts are unconstitutional and void and of no effect and violative of section 8, article 1 of the Constitution of the United States.

In consideration whereof, and forasmuch as your orator is remediless in the premises and by the strict rules of the common law can

only have relief in a court of equity where matters of this kind are properly cognizable and relievable, your orator prays that: (1) Each of the said Acts of the Legislature of Missouri of 1907, herein set forth, including said Passenger Act, be declared unconstitutional, unenforcible and not binding upon your orator. (2) All the relief asked in the original bill as to the Act of 1905 be granted as to the said Acts of 1907. (3) The temporary injunction heretofore
151 issued herein be extended against the defendants to the original and to this bill so as to cover and include any claim or right under or by virtue of any of said freight Acts of 1907 and said Passenger Act and be made permanent. (4) Your orator have such other and further relief as is just and equitable.

And may it please your Honors to grant unto your orator a writ of subpœna of the United States, issuing out of and under the seal of this honorable court, directed to each of the said defendants, including each of those hereby and herein made a party defendant, commanding them and each of them on a day certain therein to be named, and under a certain penalty, to be and appear before this honorable court then and there to answer, but not under oath, an answer under oath being expressly waived, all and singular the premises and to stand to, perform and abide by such order, direction and decree as may be made against them in the premises.

And your orator will ever pray, etc.

GEO. P. B. JACKSON,
Solicitor for Complainant.

JAMES HAGERMAN,
JOSEPH M. BRYSON,
FRANK HAGERMAN,
Of Counsel.

STATE OF MISSOURI,
City of St. Louis, ss:

I, Columbus Haile upon oath, says that I am Vice President and Traffic Manager of complainant in above entitled bill, and as such am familiar with the traffic operations of said company, and all the matters and things mentioned in the said bill which I have read. I know the contents thereof and same are true of my own knowledge, except as to those matters therein stated upon information and belief, and as to those matters, I believe them to be true.

COLUMBUS HAILE.

Subscribed and sworn to before me this 11th day of June, 1907. My commission expires December 17, 1910.

[SEAL.] CLAUDE O. PEARCY,
Notary Public.

152 Afterwards, a writ of subpœna was duly issued, served, returned and filed. Said writ with the result of the Marshal thereon is in words and figures as follows:—

UNITED STATES OF AMERICA,
Western Division of the
Western District of Missouri:

The President of the United States of America to John A. Knott, Joseph P. Rice and Frank A. Wightman, & H. R. Oglesby, Railroad Commissioners of Missouri; the Board of Railroad and Warehouse Commissioners of Missouri; Herbert S. Hadley, Attorney General of the State of Missouri; C. C. Kelly, and M. P. Belch, prosecuting attorneys of Pettis and Cole Counties Missouri, and J. F. Parker, George West and M. Doherty and C. W. McAninch, I. N. Danforth and A. L. Haggard, judges of the County Court of Pettis County, Missouri, and L. V. Ware, treasurer of Pettis County, State of Missouri, and John T. Heard, Elijah E. Johnston, Greeting:

You are hereby commanded to be and appear at Rules, to be held at the office of the Clerk of the Circuit Court of the United States, for the Western Division of the Western District of Missouri on the first Monday of August, next, at Kansas City, then and there to answer the amended & supplemental bill of complaint of Missouri, Kansas & Texas Railway Company, a citizen of the State of Kansas, filed against you on the 11th day of June, A. D. 1907; hence fail not.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, the 25th day of June, 1907. Issued at office in Kansas City, in said District, under the seal of said Court, the day and year last aforesaid.

[SEAL.] ADELAIDE UTTER.
Clerk of said Circuit Court.

153 Mem. The defendants to enter their appearance in this suit in the Clerk's Office, on or before the day at which the writ is returnable; otherwise th bill may be taken pro confesso.

ADELAIDE UTTER, *Clerk.*

UNITED STATES OF AMERICA,
Western Division of the Western District of Missouri, set:

I do hereby certify that I executed this writ by delivering a certified copy of the within writ to J. F. Parker, Manager, Parker Grain Co. Prest. and other chief officers not being found. All done in Kansas City, Jackson County, on July 3, 1907, in the Western Division of the Western District of Missouri.

E. R. DURHAM,
U. S. Marshal Western District of Missouri,
By J. E. MORRISON, *Deputy.*

Marshal's Fees.

1 Service at $2.00 ..... $2.00

154 Afterwards, to-wit, on the 15th day of July, 1907, the following order was filed and entered of record:—

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2997.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendants.

Order.

This cause coming on for hearing this July 15th, 1907, leave is hereby given to complainant to file an Amendment to Complainant's Bill of Complaint. The application for a temporary injunction against Herbert S. Hadley, Attorney General of the State of Missouri, from prosecuting the suit in the state court which he has instituted against the complainant is continued until the expiration of the ninety days test heretofore ordered, unless the court should hereafter set the same down for hearing at an earlier date.

(Signed) SMITH McPHERSON, *Judge.*

155 Afterwards, towit, on the 16th day of July A. D. 1907, an amendment to complainant's bill of complaint was filed. Said amendment is in words and figures as follows:—

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2997.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendants.

Amendment to Complainant's Bill of Complaint.

The complainant, by leave of court, presents this its amendment to the bills heretofore filed herein, and respectfully shows to the court that it desires to, and does hereby present the matters and things hereinafter set forth, as paragraphs 13, 14, 15, 16, 17, 18, 19, 20 and 21, of the amended and supplemental bill heretofore filed herein, to be inserted therein immediately following paragraph 12 and preceding the prayer thereof. Thereupon complainant avers:

13. It hereby refers to the original and to the amended and sup-

plemental bills herein, with the same force and effect as if copied herein.

14. Conceiving, and the defendants insisting, that an additional amended and supplemental bill should only be filed after notice, and upon order of court, and there being no judge of the court within the district at the time, the complainant filed herein, on June 11th, 1907, its written application for leave to file an amended and supplemental bill, reference to which application is made the
156 same as if copied herein. On the same day, there was served upon counsel for defendants in the original bill, and accepted by them, a written notice, together with a copy of the form of the said amended and supplemental bill, which notice recited that the application to file same, and for a temporary injunction would be presented to the court upon June 14, 1907, at the opening of the court at ten o'clock a. m. Said notice, the acceptance and evidence of service thereof, and form of bill, are upon file and are hereby referred to with the same force and effect as if set out herein. On June 13, 1907, at ten o'clock a. m., there then being a judge of the court within this district, and court being open, complainant presented and asked, pending a hearing of the application to file its amended and supplemental bill the general form of which was then submitted to the court, the right to temporarily file same, and for a restraining order, whereupon the court made an order entered herein upon June 13, 1907, of its own motion in the interests of the public and of all parties, maintaining the status quo pending the hearing, and restraining complainant from putting in force the maximum freight and passenger rates provided by the legislative acts of 1907 mentioned in said bill, and from complying with said acts, reference to said order is now made as fully as if copied herein.

15. Afterwards, on June 13, 1907, Herbert S. Hadley, Attorney General of the State of Missouri, and one of the defendants herein, by his counsel, in flagrant disregard and contempt of the jurisdiction of this court, filed in the circuit court of the city of St. Louis, Missouri, his two petitions in equity in the name of the state at his relation as Attorney General, against this complainant, one asking that the court by mandatory injunction require complainant to put in force the maximum freight rates provided by the said legislative acts of 1907 mentioned in the amended and supplemental bill, and to comply with said acts, and the other as asking the same relief as to the rates fixed by the Passenger Act of 1907. And at his solicita-
157 tion, the judge of said state court did, in each of said cases, the same day, without notice, issue its restraining order returnable upon the 24th day of June, 1907, requiring the forthwith doing of such acts by this complainant.

Complainant asks leave to produce upon the hearing of this petition, certified copies of said proceedings in the state court, and refer to them as fully as if copied herein.

16. Thereafter at the time fixed in said notice, and upon June 14, 1907, at ten o'clock a. m., there was presented to this court the applications of complainant for leave to file said amended and supple-

mental bill and for a temporary injunction, and defendants asked for a continuance of the hearing for one day, which the court granted, and upon its own motion ordered that said amended and supplemental bill should be deposited with the clerk (which was then and there done), that in the interest of the public and all parties the status quo should be maintained, and that complainant in the meantime and until the further order of court should be restrained from putting in force the maximum freight and passenger rates fixed by the legislative acts of 1907 mentioned in the said bill, and from complying with said acts. A reference to the said order is now made with the same force and effect as if copied herein. In the meantime the said restraining orders from the state court were served upon complainant. Thereafter, upon June 15, 1907, the said applications were by the counsel for the respective parties and by this court, taken under advisement.

17. Thereafter upon June 17, 1907, this court made and entered an order which, omitting title, is in words and figures as follows:

Order.

"This cause came on for hearing this 17th day of June, 1907, the parties appearing by their counsel in response to notice, and the court being fully advised in the premises, orders and adjudges:

1. Complainant's motion for leave to file an amended and supplemental bill is sustained and such leave is given, the same to be filed as of June 11th, 1907.

Upon such filing process shall be issued so that if the court
158 hereafter decides that the ends of justice require, and the rules of equity permit, the said bill may be treated as an amended, supplemental, ancillary, dependent or original bill.

To said bill, each of the parties named therein shall be and is hereby made a party.

2. Complainant's application for a temporary injunction is, as to the maximum freight laws of 1907, sustained. Until the further order of the court herein, the defendants and each of them are enjoined from doing any act, attempting to recover any penalty, seeking to enforce or having enforced, or asserting any claim or right under or by virtue of either of the maximum freight rate acts of 1907 mentioned in said amended and supplemental bill, to the end that each defendant as to each of said acts of 1907 be restrained as effectually as the defendants were enjoined by the temporary injunction heretofore issued as to and in connection with the act of 1905. By consent of the complainant, the injunction bond heretofore filed shall stand as applicable to this order, the same as if it were executed and filed this day.

3. As to the passenger act of 1907, the order heretofore entered upon the court's own motion shall remain in force until June 19th, 1907, at 6 o'clock a. m., at which time the rates fixed by said act shall be put and kept in force for three months without prejudice to the rights of either party for the purpose of ascertaining more

definitely the extent that experience will show that the rates under said act reduce or increase the earnings of complainant.

The court reserves the power, upon the application of any person interested, to hereafter make such further or other order upon this subject as it deems proper.

4. Pending the further hearing and final determination of this case, the complainant shall preserve and keep in existence its way-bills for state freight.

SMITH McPHERSON, *Judge.*"

Accordingly said bills were forthwith marked filed as of June 11, 1907, as in and by said order provided. Subpœnas have been duly issued as in and by said order provided, and served upon most of the defendants, and as to the others are in the marshal's hands for service and not yet returned, and complainant is not yet advised as to whether actual personal service has been had.

18. Thereafter upon June 24th, 1907, the circuit court of the City of St. Louis, Missouri, upon the application of the said Attorney General entered an order dismissing the case mentioned in paragraph 15 hereof which was filed against this complainant for a mandatory injunction to require it to put in force the maximum freight rates provided by the said legislative acts of 1907, and upon the same day the same court, upon the application of the said Attorney General, entered an order setting aside the restraining order issued in the case mentioned in the same paragraph to require it to put in force

159 the maximum passenger rates fixed by the legislative act of 1907 aforesaid, but did not dismiss the case, the Attorney General insisting that it should remain pending. He now threatens to and he will, unless enjoined herein, proceed with the trial and prosecution of the same on and after September 20, 1907, at the expiration of the ninety day test mentioned in the order hereinbefore set out.

19. The said state court has no jurisdiction in the premises and has no right or power to compel complainant by injunction to put in force the maximum passenger rates aforesaid, and any attempt so to do would deny to complainant the protection accorded to it by the fourteenth amendment to the constitution of the United States, which it now claims. Such attempt to oust this court of its jurisdiction, is in contempt thereof, and as to it was and is futile.

20. With the exception hereinafter stated, the facts alleged herein in paragraphs 13 to 18 inclusive, are true as to each of the following railway companies in the state of Missouri; St. Louis & San Francisco; Atchison, Topeka & Santa Fe; St. Louis Southwestern; Chicago, Rock Island & Pacific; St. Louis, Kansas City & Colorado; Kansas City Southern; St. Louis & Hannibal; Missouri Pacific; St. Louis Iron Mountain & Southern; Missouri, Kansas & Texas; Chicago, Burlington & Quincy; Quincy, Omaha & Kansas City; Wabash; St. Joseph & Grand Island; Kansas City, Clinton & Springfield; Chicago Great Western; Chicago, Milwaukee & St. Paul, and Chicago & Alton. Each of said companies had at the same time filed in this court bills similar in nature to the original bill herein to enjoin the enforcement of the Acts of 1907, in which temporary injunctions

had been issued and which cases are still pending and undetermined. Said exception is that the cases in the state court mentioned in paragraph 15 hereof against the Atchison, Topeka & Santa Fe; Chicago, Rock Island & Pacific; St. Louis, Kansas City & Colorado; Kansas City Southern; Chicago, Burlington & Quincy; Quincy, Omaha & Kansas City; St. Joseph — Grand Island; Kansas City, Clinton & Springfield; Chicago & Great Western; Chicago, Milwaukee
160 & St. Paul and Chicago & Alton, — filed in the circuit court of Jackson County, Missouri, while those against the other companies were filed in the circuit court of St. Louis, Missouri. With this exception, similar action to that herein averred was taken in each case pending in this court, and the Attorney General threatens to and unless restrained will, proceed to prosecute each of said cases in the state courts as hereinbefore alleged. As to several of said complainants, the restraining orders from the state courts were served while the parties were presenting said applications upon June 14.

21. The passenger act of 1907, and each freight act of 1907, is void and of no effect for that it is an attempt to deprive complainant of its property without due process of law, and denies to complainant the equal protection of the law for reasons additional to those heretofore given, in that:

(*a*) Harsh and unreasonable penalties are provided with no provision for a test of the validity of the act, except at the risk of incurring such penalties which, if applied to each shipment of state freight or each passenger traveling on a state journey, over complainant's line, would within two years be greater than the value of complainant's whole property devoted to such use.

(*b*) It directly influences, affects and bears upon interstate freight and passenger traffic and fixes and regulates the same, for these reasons additional to those heretofore given:

(1) Many of the companies operate lines between the large cities of the state, some of which are wholly within the state and some of which go out of the state into Kansas and then back into this state. For illustration: The Kansas City, Clinton & Springfield Railway Company and the St. Louis & San Francisco Railroad Company are trunk lines between Kansas City, Missouri, and Springfield, Missouri, of substantially the same length; the line of
161 the former between those points extending into and out of Kansas, so that all its carriage between said points is interstate; the other company has one line which in said course runs into and out of a portion of Kansas, and another separate line between said points which extends wholly through Missouri so that the carriage between said points upon one line is interstate and upon the other, state. Between Joplin and Kansas City there are four trunk lines of substantially the same length, that of the Missouri Pacific Railway Company between said points being wholly within the state and therefore all of its traffic is state, while the lines of your complainant and those of the Kansas City Southern Railway Company and the St. Louis & San Francisco Railroad Company between said points extend into and out of Kansas, so that all the traffic between

said points is interstate. Between St. Louis, Missouri, and St. Joseph, Missouri, there are two trunk lines, one of which is that of the Chicago, Burlington & Quincy Railway Company, which does not pass out of the state, so that the traffic between said points upon that line is wholly state, the other line is that of the Missouri Pacific Railway Company which in its course passes into and out of Kansas, so that the entire traffic between said points is interstate. Between Kansas City, Missouri, and St. Joseph, Missouri, there are four trunk lines of substantially equal length, those of the Chicago, Burlington & Quincy Railway Company and the St. Joseph & Grand Island Railway Company are wholly within Missouri and all their traffic between said points is state; the lines of the Missouri Pacific Railway Company and of the Chicago Great Western Railway Company pass into and out of Kansas, so that the entire traffic thereon between said points is wholly interstate, all business passing entirely over the lines of your complainant from points in Missouri to Kansas City, Missouri, and vice versa, passes through Kansas and is interstate business.

The said five cities are the largest in the state, their populations, according to the census of 1900 being, St. Louis 575,238; Kansas City, 163,752; St. Joseph, 102,979; Joplin, 26,023; Springfield, 23,267.

The traffic between said cities upon said lines is a very substantial part of the traffic of said lines and of the state; the rates be-
162 tween the points as aforesaid, both for passenger and freight, upon those lines which are interstate, have been for years fixed at a reasonable sum which is much higher than the rates fixed by any of the acts of the legislature in question. If any of the rates mentioned in said acts be put in force between said points upon lines wholly within the state, each of the companies operating the lines which are interstate will necessarily be compelled to lower their rates to the same figure or else, as a matter of fact, none of the traffic between said points will be carried over its line.

(3) The large cities and populous communities of the state are upon its eastern and western borders; the main course of traffic through the state is east and west; all the railroads in the state either operate lines extending into other states, or into the state of Kansas adjoining Missouri upon the west, and Illinois adjoining it upon the east, or else have joint freight and passenger traffic arrangements with lines running into those states for interstate through carriage both of freight and passengers.

So far, pending the test of the passenger rate ordered by this court, it has been demonstrated and is the fact that the interstate passenger rates are much higher than those fixed by the passenger act of 1907, so that passengers starting from points in Missouri to go to other states buy tickets at two cents a mile to the last station in Missouri upon its border, and then buy tickets or pay fare from thence to their interstate destination, and vice versa from points of interstate trip into Missouri. For illustration a concrete case may be stated. From St. Louis to Kansas City is about 275 miles, thence to Topeka, Kansas, 67 miles, or a total of about 342 miles. The fair

and reasonable interstate rate is and has for years been $9.50. A passenger starting from St. Louis may and does, buy his ticket to Kansas City, 275 miles at two cents a mile, or $5.50; he then buys his ticket to Topeka, 67 miles, at three cents a mile or $2.00, making a total from St. Louis to Topeka of $7.50, thus saving to him-
163 self and losing to the carrier the difference between $9.50 and $7.50, or $2.00. This illustrates the situation upon other lines in the state, so that as a matter of fact it is true that in a state located as the state of Missouri is, the lowering of the rate upon the state traffic below that of the interstate necessarily affects, fixes and lowers the interstate rate in the manner herein stated. The same thing is true of the freight traffic (though not in this respect in as pointed a degree), because the same practice can, is and will be adopted as to freight.

Wherefore, complainant prays, as heretofore prayed, and asks that the defendants be required to also answer this amendment, but an answer under oath is waived, and in addition to the relief heretofore asked, complainant asks that Herbert S. Hadley, Attorney General of the State of Missouri, be temporarily and permanently enjoined from prosecuting the said suit in the state court which he has instituted against the complainant.

And your orator will ever pray, etc.

FRANK HAGERMAN,
GEORGE P. B. JACKSON,
Solicitors for Complainant.

JAMES HAGERMAN,
JOSEPH M. BRYSON,
Of Counsel.

STATE OF MISSOURI,
City of St. Louis, ss:

I, C. Haile, upon oath say that I am Vice President and Traffic Manager of complainant in the above entitled cause, and as such am familiar with the traffic questions of said company, and all the matters and things mentioned in said amendment which I have read; I know the contents thereof and the same are true of my own knowledge, except as to those stated upon information and belief, and as to those matters, I believe them to be true.

C. HAILE.

Subscribed and sworn to before me this 1st day of July, 1907. My commission expires March 18th, 1908.

[SEAL.] LEE W. HAGERMAN,
Notary Public.

164 Afterwards, to-wit, on the 16th day of July, 1907, an Acknowledgment of Service of Subpœna was filed. Said Acknowledgment is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2997.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendants.

Acknowledgment of Service of Subpœna.

Service of the subpœna issued herein upon June 25, 1907, is acknowledged with the same force and effect and no more than if served by the proper officer.

HERBERT S. HADLEY,
Attorney General;
Solicitors for Railroad Commissioners, Including H. R. Oglesby, Herbert S. Hadley, Attorney General, and C. C. Kelly, Prosecuting Att'y, of Pettis Co., Mo.; M. P. Belch, Prosecuting Att'y, Cole Co., Mo., and Geo. W. West.

165 Afterwards, to-wit, on the 16th day of July, 1907, an Acknowledgment of Service of Subpœna was filed. Said acknowledgment is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2997.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendants.

Acknowledgment of Service of Subpœna.

Service of the subpœna issued herein upon June 25, 1907, is acknewledged with the same force and effect and no more than if served by the proper officer.

M. DOHERTY.

166 Afterwards, to-wit, on the 17th day of July, 1907, an Acknowledgment of Service of Subpœna was filed. Said Acknowledgment is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2997.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendants.

Acknowledgment of Service of Subpœna.

Service of the subpœna issued herein upon June 25, 1907, is acknowledged with the same force and effect and no more than if served by the proper officer.

JOHN T. HEARD.
E. E. JOHNSTON.
C. W. McANINCH.
A. L. HAGGARD.
I. M. DANFORTH.
L. V. WARE.

167 Afterwards, to-wit, on the 2nd day of August, A. D. 1907, the joint demurrer of John A. Knott, et al., was filed. Said demurrer is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2997.

MISSOURI, KANSAS AND TEXAS RAILWAY COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendants.

The Joint Demurrers of the Above-named Defendants, John A. Knott, Frank Wightman, and H. R. Oglesby, Railroad Commissioners of the State of Missouri, to the Amended and Supplemental Bill of Complaint as Amended.

First. These defendants, by protestation, not confessing or acknowledging all or any of the matters and things in the complainant's amended and supplemental bill of complaint as amended to be true in manner and form as the same are therein and thereby set forth and alleged, doth demur thereto and for cause of demurrer show:

1. That the said complainant has not, in and by said amended and supplemental bill of complaint, as amended, made or stated any

such cause as ought to entitle it to the relief thereby sought and prayed for, from or against these defendants, or to any relief whatsoever.

2. It appears upon the farce of complainant's amended and supplemental bill of complaint as amended that the complainant has an adequate remedy at law.

3. The matters and things set forth in complainant's amended and supplemental bill of complaint, as amended, are not nor are any of them germane to or supplementary of the original bill in this case.

168 4. If the matters and things set forth in complainant's amended and supplemental bill of complaint, as amended, entitle the complainant to any relief whatsoever, they constitute a new, original and independent cause of action, not connected with or dependent upon the cause of action set forth in the original bill.

Second. These defendants further demur to the fifth, sixth, seventh and eighth paragraphs of the complainant's amended and supplemental bill of complaint, as amended, because (*a*) the same are not germane to or supplementary of the original bill herein; (*b*) if the matters and things set forth in said paragraphs entitle the complainant to any relief whatsoever, they constitute a new, original and independent cause of action not connected with or dependent upon the cause of action set forth in the original bill; (*c*) the matters and things set forth in said paragraphs do not entitle complainant to the relief prayed for, or to any relief whatsoever.

Third. These defendants further demur to the ninth and tenth paragraphs of the complainant's amended and supplemental bill of complaint, as amended, because (*a*) the matters and things set forth in said paragraphs are not germane to or supplementary of the original bill herein; (*b*) if the matters and things set forth in said paragraphs entitle the complainant to any relief whatsoever, they constitute a new, original and independent cause of action not connected with or dependent upon the cause of action set forth in the original bill; (*c*) the matters and things set forth in said paragraphs do not entitle the complainant to the relief prayed for, or to any relief whatsoever.

Fourth. These defendants further demur to the eleventh and twelfth paragraphs of the complainant's amended and supplemental bill of complaint, as amended, because (*a*) the matters and things set forth in said paragraphs are not germane to or supplementary of the original bill herein; (*b*) if the matters and things set

169 forth in said paragraphs entitle the complainant to any relief whatsoever, they constitute a new, original and independent cause of action, not connected with or dependent upon the cause of action, not connected with or dependent upon the cause of action set action set forth in the original bill; (*c*) the matters and things set forth in said paragraphs do not entitle the complainant to the relief prayed for, or to any relief whatsoever.

Fifth. These defendants further demur to the fourteenth, fifteenth, sixteenth, seventeenth, eighteenth and nineteenth paragraphs of the complainant's amended and supplemental bill of complaint,

as amended, because (*a*) the matters and things set forth in said paragraphs are not germane to or supplementary of the original bill herein; (*b*) if the matters and things set forth in said paragraphs entitle the complainant to any relief whatsoever, they constitute a new, original and independent cause of action, not connected with or dependent upon the cause of action set forth in the original bill; (*c*) the matters and things set forth in said paragraphs do not entitle the complainant to the relief prayed for or to any relief whatever; (*d*) it appears from said paragraphs that the State Circuit Court of Kansas City, Missouri, has jurisdiction of the suit against the complainant pending therein and mentioned in said paragraphs; (*e*) the State of Missouri had a lawful right to institute said suit in said State court, and said State court had a lawful right to entertain jurisdiction of the same; (*f*) the said Attorney General had a lawful right and the authority to institute the suit referred to in said paragraphs against the complainant, in the State Circuit Court at Kansas City, Missouri, and he has the lawful right and authority to proceed with and prosecute the same to a conclusion; (*g*) if the complainant is aggrieved by the suit against it in the State Circuit Court mentioned in said paragraphs, it has an adequate remedy by making its defense (if any it have) to the same, in said State court.

Sixth. These defendants further demur to the twentieth paragraph of complainant's amended and supplemental bill of complaint, as amended, because (*a*) the matters and things set forth in
170 said paragraph are not germane to or supplementary of the original bill herein; (*b*) if the matters and things set forth in said paragraph entitle the complainant to any relief whatsoever, they constitute a new, original and independent cause of action, not connected with or dependent upon the cause of action set forth in the original bill; (*c*) the matters and things set forth in said paragraph do not entitle the complainant to the relief prayed for or to any relief whatsoever; (*d*) it appears from said paragraph that the Circuit Court of Jackson County, Missouri, and the Circuit Court at St. Louis, Missouri, have jurisdiction, respectively, of the suits against the complainant and other railway companies mentioned in said paragraph; (*e*) the State of Missouri had a lawful right to institute the suits mentioned in said paragraph, and said State courts had a lawful right to entertain jurisdiction of the same; (*f*) the said Attorney General had a lawful right and the authority to institute in said State Circuit Courts the suits against the complainant and the other railway companies mentioned in said twentieth paragraph, and he has the lawful right and authority to proceed with and prosecute the same to a conclusion; (*g*) if the complainant or any of said other railway companies are aggrieved by the suits in said State Circuit Courts mentioned in said twentieth paragraph, they have an adequate remedy by making their defense (if any they have) to the same, in said State courts.

Seventh. These defendants further demur to the twenty-first paragraph of complainant's amended and supplemental bill of complaint as amended, because (*a*) the matters and things set forth in said paragraph are not germane to or supplementary of the original bill

herein; (*b*) if the matters and things set forth in said paragraph entitle the complainant to any relief whatsoever, they constitute a new, original and independent cause of action, not connected with or dependent upon the cause of action set forth in the original bill; (*c*) the matters and things set forth in said paragraph do not entitle the complainant to the relief prayed for or to any relief whatever.

171 Wherefore, and for divers other good causes of demurrer appearing in complainant's amended and supplemental bill of complaint, as amended, and in the paragraphs thereof specifically mentioned in the foregoing demurrers, numbered second third, fourth, fifth, sixth and seventh, respectively, these defendants demur thereto and humbly demand the judgment of this court whether they shall be compelled to make any further or other answer to said amended and supplemental bill of complaint as amended or to the said paragraphs hereinbefore specifically mentioned, or any of them, and pray to be hence dismissed with their costs and charges in this behalf most wrongfully sustained.

HERBERT S. HADLEY,
Attorney General;
JOHN KENNISH,
FREDERICK W. LEHMANN,
SANFORD B. LADD,
Solicitors for Defendants.

FREDERICK W. LEHMANN,
SANFORD B. LADD,
Of Counsel.

I hereby certify that the foregoing demurrers are, in my opinion, well founded in point of law.

SANFORD B. LADD,
Of Counsel for Defendants.

The affidavit required by Equity Rule 31 is hereby expressly waived.

FRANK HAGERMAN,
Counsel for Complainant.

172 Afterwards, to wit, on the 2nd day of August, A. D. 1907, the demurrer of Herbert S. Hadley, Attorney General was filed.

Said demurrer is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2997.

MISSOURI, KANSAS AND TEXAS RAILWAY COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendants.

The Demurrers of the Above-Named Defendant, Herbert S. Hadley, Attorney General, to the Amended and Supplemental Bill of Complaint as Amended.

First. This defendant, by protestation, not confessing or acknowledging all or any of the matters and things in the complainant's amended and supplemental bill of complaint as amended to be true in manner and form as the same are therein and thereby set forth and alleged, doth demur thereto and for cause of demurrer showeth:

1. That the said complainant has not, in and by said amended and supplemental bill of complaint, as amended, made or stated any such cause as doth or ought to entitle it to the relief thereby sought and prayed for, from or against this defendant, or to any relief whatsoever.

2. It appears upon the face of complainant's amended and supplemental bill of complaint as amended that the complainant has an adequate remedy at law.

3. The matters and things set forth in complainant's amended and supplemental bill of complaint, as amended, are not nor are any of them germane to or supplementary of the original bill in this case.

173 4. If the matters and things set forth in complainant's amended and supplemental bill of complaint, as amended, entitle the complainant to any relief whatsoever, they constitute a new, original and independent cause of action, not connected with or dependent upon the cause of action set forth in the original bill.

Second. This defendant further demurs to the fifth, sixth, seventh and eighth paragraphs of the complainant's amended and supplemental bill of complaint, as amended, because (*a*) the same are not germane to or supplementary of the original bill herein; (*b*) if the matters and things set forth in said paragraphs entitle the complainant to any relief whatsoever, they constitute a new, original and independent cause of action not connected with or dependent upon the cause of action set forth in the original bill; (*c*) the matters and things set forth in said paragraphs do not entitled complainant to the relief prayed for, or to any relief whatsoever.

Third. This defendant further demurs to the ninth and tenth paragraphs of the complainant's amended and supplemental bill of complaint, as amended, because (*a*) the matters and things set forth in said paragraphs are not germane to or supplementary of the

original bill herein; (*b*) if the matters and things set forth in said paragraphs entitle the complainant to any relief whatsoever, they constitute a new, original and independent cause of action not connected with or dependent upon the cause of action set forth in the original bill; (*c*) the matters and things set forth in said paragraphs do not entitle the complainant to the relief prayed for, or to any relief whatsoever.

Fourth. This defendant further demurs to the eleventh and twelfth paragraphs of the complainant's amended and supplemental bill of complaint, as amended, because (*a*) the matters and things set forth in said paragraphs are not germane to or supplementary of the original bill herein; (*b*) if the matters and things set
174 forth in said paragraphs entitle the complainant to any relief whatsoever, they constitute a new, original and independent cause of action, not connected with or dependent upon the cause of action set forth in the original bill; (*c*) the matters and things set forth in said paragraphs do not entitle the complain-t to the relief prayed for, or to any relief whatsoever.

Fifth. This defendant further demurs to the fourteenth, fifteenth, sixteenth, seventeenth, eighteenth and nineteenth paragraphs of the complainant's amended and supplemental bill of complaint, as amended, because (*a*) the matters and things set forth in said paragraphs are not germane to or supplementary of the original bill herein; (*b*) if the matters and things set forth in said paragraphs entitle the complainant to any relief whatsoever, they constitute a new, original and independent cause of action, not connected with or dependent upon the cause of action set forth in the original bill; (*c*) the matters and things set forth in said paragraphs do not entitle the complainant to the relief prayed for or to any relief whatever; (*d*) it appears from said paragraphs that the State Circuit Court of Kansas City, Missouri, has jurisdiction of the suit against the complainant pending therein and mentioned in said paragraphs; (*e*) the State of Missouri had a lawful right to institute said suit in said State court, and said State court had a lawful right to entertain jurisdiction of the same; (*f*) the said Attorney General had a lawful right and the authority to institute the suit referred to in said paragraphs against the complainant, in the State Circuit Court at Kansas City, Missouri, and he has the lawful right and authority to proceed with and prosecute the same to a conclusion; (*g*) if the complainant is aggrieved by the suit against it in the State Circuit Court mentioned in said paragraphs, it has an adequate remedy by making its defense (if any it have) to the same, in said State court.

Sixth. This defendant further demurs to the twentieth paragraph of complainant's amended and supplemental bill of complaint, as amended, because (*a*) the matters and things set forth in
175 said paragraph are not germane to or supplementary of the original bill herein; (*b*) if the matters and things set forth in said paragraph entitle the complainant to any relief whatsoever, they constitute a new, original and independent cause of action, not connected with or dependent upon the cause of action set forth in the original bill; (*c*) the matters and things set forth in said para-

graph do not entitle the complainant to the relief prayed for or to any relief whatsoever; (*d*) it appears from said paragraph that the Circuit Court of Jackson County, Missouri, and the Circuit Court at St. Louis, Missouri, have jurisdiction, respectively, of the suits against the complainant and other railway companies mentioned in said paragraph; (*e*) the State of Missouri had a lawful right to institute the suits mentioned in said paragraph, and said State courts had a lawful right to entertain jurisdiction of the same; (*f*) the said Attorney General had a lawful right and the authority to institute in said State Circuit Courts the suits against the complainant and the other railway companies mentioned in said twentieth paragraph, and he has the lawful right and authority to proceed with and prosecute the same to a conclusion; (*g*) if the complainant or any of said other railway companies are aggrieved by the suits in said State Circuit Courts mentioned in said twentieth paragraph, they have an adequate remedy by making their defense (if any they have) to the same, in said State courts.

Seventh. This defendant further demurs to the twenty-first paragraph of complainant's amended and supplemental bill of complaint, as amended, because (*a*) the matters and things set forth in said paragraph are not germane to or supplementary of the original bill herein; (*b*) if the matters and things set forth in said paragraph entitle the complainant to any relief whatsoever, they constittue a new, original and independent cause of action, not connected with or dependent upon the cause of action set forth in the original bill; (*c*) the matters and things set forth in said paragraph do not entitle the complainant to the relief prayed for or to any relief whatever.

Wherefore, and for divers other good causes of demurrer
176 appearing in complainant's amended and supplemental bill of complaint, as amended, and in the paragraphs thereof specifically mentioned in the foregoing demurrers, numbered second, third, fourth, fifth, sixth and seventh, respectively, this defendant demurs thereto and humbly demands the judgment of this court whether he shall be compelled to make any further or other answer to said amended and supplemental bill of complaint as amended, or to the said paragraphs hereinbefore specifically mentioned, or any of them, and prays to be hence dismissed with his costs and charges in this behalf most wrongfully sustained.

HERBERT S. HADLEY,
Attorney General;
JOHN KENNISH,
FREDERICK W. LEHMANN,
SANFORD B. LADD,
Solicitors for Defendant.

FREDERICK W. LEHMANN,
SANFORD B. LADD,
Of Counsel.

I hereby certify that the foregoing demurrers are, in my opinion, well founded in point of law.

SANFORD B. LADD,
Of Counsel for Defendant.

The affidavit required by Equity Rule 31 is hereby expressly waived.

FRANK HAGERMAN,
Counsel for Complainant.

177 Afterwards, to wit, on the 2nd day of August, A. D. 1907, the joint and several demurrer of C. W. McAninch, et al., was filed.

Said demurrer is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2997.

MISSOURI, KANSAS AND TEXAS RAILWAY COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendants.

The Joint and Several Demurrer of C. W. McAninch, A. L. Haggard, and I. M. Danforth, Judges of the County Court of Pettis County, Missouri, and L. V. Ware, County Treasurer of said County, Four of the Defendants Herein, to Complainant's Original Bill of Complaint, its Amended and Supplemental Bill and the Amendment to said Bill of Complaint.

These defendants, by protestation, not confessing all or any of the matters and things in complainant's original bill of complaint, its amended and supplemental bill, and the amendment to said bill of complaint to be true in such manner and form as the same are therein set forth and alleged, demur thereto, and for cause of demurrer show that the said complainant has not in and by said original bill of complaint, its amended and supplemental bill, and the amendment to said bill of complaint, made or stated any such cause as doth or ought to entitle it to the relief thereby sought and prayed for from or against these defendants or either of them.

178 Wherefore, and for divers other good, causes of demurrer appearing in said original bill of complaint, the said amended and supplemental bill, and the said amendment to the bill of complaint, these defendants respectively demur thereto and humbly demand the judgment of this court whether they shall be compelled to make any further or other answer to the said original bill of complaint, the said amended and supplemental bill, and the amend-

ment to the bill of complaint, and pray to be hence dismissed with their costs and charges in this behalf most wrongfully sustained.

HERBERT S. HADLEY,
Attorney General;
JOHN KENNISH,
FREDERICK W. LEHMANN,
SANFORD B. LADD,
Solicitors for Defendants.

FREDERICK W. LEHMANN,
SANFORD B. LADD,
Of Counsel.

I hereby certify that in my opinion the foregoing demurrer is well founded in point of law.

SANFORD B. LADD,
Of Counsel for Defendants.

The affidavit required by Equity Rule 31, is hereby expressly waived.

FRANK HAGERMAN,
Counsel for Complainant.

179 Afterwards, to-wit, on the 2nd day of August, A. D. 1907, the joint and several demurrer of J. T. Heard, et al., was filed.

Said demurrer is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2997.

MISSOURI, KANSAS AND TEXAS RAILWAY COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendants.

The Joint and Several Demurrer of John T. Heard and Elijah E. Johnson, Two of the Defendants Herein, to Complainant's Original Bill of Complaint, its Amended and Supplemental Bill and the Amendment to said Bill of Complaint.

These defendants, by protestation, not confessing all or any of the matters and things in complainant's original bill of complaint, its amended and supplemental bill, and the amendment to said bill of complaint to be true, in such manner and form as the same are therein set forth and alleged, demur thereto, and for cause of demurrer show that the said complainant has not in and by said original bill of complaint, its amended and supplemental bill, and the amendment to said bill of complaint, made or stated any such cause

as doth or ought to entitle it to the relief thereby sought and prayed for from or against these defendants or either of them.

180 Wherefore, and for divers other good causes of demurrer appearing in said original bill of complaint, the said amended and supplemental bill, and the said amendment to the bill of complaint, these defendants respectively demur thereto and humbly demand the judgment of this court whether they shall be compelled to make any further or other answer to the said original bill of complaint, the said amended and supplemental bill, and the amendment to the bill of complaint, and pray to be hence dismissed with their costs and charges in this behalf most wrongfully sustained.

HERBERT S. HADLEY,
Attorney General;
JOHN KENNISH,
FREDERICK W. LEHMANN,
SANFORD B. LADD,
Solicitors for Defendants.

FREDERICK W. LEHMANN,
SANFORD B. LADD,
Of Counsel.

I hereby certify that in my opinion the foregoing demurrer is well founded in point of law.

SANFORD B. LADD,
Of Counsel for Defendants.

The affidavit required by Equity Rule 31 is hereby expressly waived.

FRANK HAGERMAN,
Counsel for Complainant.

181 Afterwards, towit on the 2nd day of August, A. D. 1907, the joint and several demurrer of C. C. Kelley, et al., was filed. Said demurrer is in words and figures as follows:—

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2997.

MISSOURI, KANSAS AND TEXAS RAILWAY COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendants.

The Joint and Several Demurrer of C. C. Kelley, Prosecuting Attorney Pettis County; M. P. Belch, Prosecuting Attorney Cole County; George W. West, Three of the Defendants Herein, to Complainant's Amended and Supplemental Bill of Complaint as Amended.

These defendants, by protestation, not confessing or acknowledging all or any of the matters and things in the complainant's

amended and supplemental bill of complaint, as amended, to be true in manner and form as the same are therein and thereby set forth and alleged, do demur thereto and for cause of demurrer show:

First. That the said complainant has not, in and by said amended and supplemental bill of complaint, as amended, made or stated any such cause as ought to entitle it to the relief thereby sought and prayed for from or against these defendants, or to any relief whatsoever.

Second. If the matters and things set forth in complainant's amended and supplemental bill of complaint, as amended, entitle the complainant to any relief whatsoever, they constitute a new, original and independent cause of action, not connected with or dependent upon the cause of action set forth in the original bill.

182 Wherefore, and for divers other good causes of demurrer appearing in complainant's amended and supplemental bill of complaint as amended these defendants demur thereto and humbly demand the judgment of this court whether they shall be compelled to make any further or other answer to said amended and supplemental bill of complaint, as amended, and pray to be hence dismissed with their costs and charges in this behalf most wrongfully sustained.

HERBERT S. HADLEY,
Attorney General;
JOHN KENNISH,
FREDERICK W. LEHMANN,
SANFORD B. LADD,
Solicitors for Defendants.

FREDERICK W. LEHMANN,
SANFORD B. LADD,
Of Counsel.

I hereby certify that the foregoing demurrer is, in my opinion, well founded in point of law.

SANFORD B. LADD,
Of Counsel for Defendants.

The affidavit required by Equity Rule 31 is hereby expressly waived.

FRANK HAGERMAN,
Counsel for Complainant.

183 Afterwards, towit on the 2nd day of August, A. D. 1907, the demurrer of M. Doherty was filed.

Said demurrer is in words and figures as follows:—

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2997.

MISSOURI, KANSAS AND TEXAS RAILWAY COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendants.

Demurrer of M. Doherty, One of the Defendants Herein, to Complainant's Amended and Supplemental Bill of Complaint as Amended.

These defendants, by protestation, not confessing or acknowledging all or any of the matters and things in the complainant's amended and supplemental bill of complaint, as amended, to be true in manner and form as the same are therein and thereby set forth and alleged, do demur thereto, and for caues of demurrer show:

First. That the said complainant has not in and by said amended and supplemental bill of complaint as amended, made or stated any such cause as ought to entitle it to the relief thereby sought and prayed for from or against these defendants, or to any relief whatsoever.

Second. If the matters and things set forth in complainant's amended and supplemental bill of complaint, as amended, entitle the complainant to any relief whatsoever, they constitute a new, original and independent cause of action, not connected with or dependent upon the cause of action set forth in the original bill.

184 Wherefore, and for divers other good causes of demurrer appearing in complainant's amended and supplemental bill of complaint as amended these defendants demur thereto and humbly demand the judgment of this court whether they shall be compelled to make any further or other answer to said amended and supplemental bill of complaint as amended, and pray to be hence dismissed with their costs and charges in this behalf most wrongfully sustained.

HERBERT S. HADLEY,
Attorney General;
JOHN KENNISH,
FREDERICK W. LEHMANN,
SANFORD B. LADD,
Solicitors for Defendants.

FREDERICK W. LEHMANN,
SANFORD B. LADD,
Of Counsel.

I hereby certify that the foregoing demurrer is, in my opinion, well founded in point of law.

SANFORD B. LADD,
Of Counsel for Defendants.

The affidavit required by Equity Rule 31 is hereby expressly waived.

FRANK HAGERMAN,
Counsel for Complainant.

185 Afterwards, to-wit, on the 24th day of September, 1907, an Interlocutory Report of Special Master was filed.

And afterwards, to-wit, on the 7th day of October, 1907, the said Interlocutory Report of said Special Master with the order thereon was refiled.

Said Interlocutory Report and the Order thereon is in words and figures as follows:

Circuit Court of the United States, Western Division of the Western District of Missouri.

MISSOURI PACIFIC RAILWAY COMPANY
vs.
HERBERT S. HADLEY, Attorney General., et al.

CHICAGO, BURLINGTON & QUINCY RAILWAY CO.
vs.
HERBERT S. HADLEY, Attorney General, et al.

WABASH RAILROAD COMPANY
vs.
HERBERT S. HADLEY, Attorney General, et al.

Interlocutory Report of Special Master.

To the Honorable the Judges of said Court:

By reason of the premises hereinafter recited the undersigned Special Master to whom the above entitled and fifteen other like causes were referred by order of this Court bearing date March 5th, 1906, begs leave to present this special interlocutory report.

Having completed the taking of the evidence offered by the respective parties complainants and defendants in the three cases above named, these having been duly selected out of the
186 eighteen for hearing in the first instance in pursuance of the order of reference, the same were set down for argument before the Master on June 18th, 1907. On said date, however, the complainants in all the cases, having immediately prior thereto filed their amended and supplemental bills in this Court, further proceedings before the Master were by consent of all parties suspended subject to be resumed on due notice.

As appears in said amended and supplemental bills and the several amendments thereof since filed, copies of all whereof have been duly received by the Master, there have been brought into these cases various new and additional matters not embraced in the issues so referred.

And being in doubt as to whether the filing of such amended and supplemental bills do of necessity or should, pending proceedings in Court thereon, operate as a stay of further proceedings before him and of his report upon the matters and issues so referred, the Special Master therefore submits this Interlocutory Report and respectfully prays for such further orders and directions in the premises as to the Court may seem meet.

F. L. SCHOFIELD,
Special Master.

The amendments pending the hearing of the original bills of complaint had the effect, in law, of uniting the matters complained of in one bill. They, therefore, constitute but one bill of complaint and all matters involved should be fully heard and the Master's findings should be embraced in a single report.

(Signed) JNO. F. PHILIPS, *Judge.*

October 7th, 1907.

187 Afterwards, to-wit, on the 13th day of November, 1907, the following order was filed and entered of record:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2997.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendants.

Order.

This cause coming on for hearing this November 13, 1907, it is by consent of parties ordered that leave of court be and is hereby granted to amend complainant's "Amendment to Complainant's Bill of Complaint," by erasing and striking out of paragraph 15 thereof the words "between eleven and twelve p. m. in lines 27 and 28 of page 2, and the words "at the said hours of" in lines 1 and 2 on page 3, and complainant's counsel are directed to forthwith make such erasure.

(Signed) SMITH McPHERSON, *Judge.*

188 Afterwards, to-wit, on the 10th day of April, 1908, the following order was filed and entered of record, to-wit:—

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2997.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General, et al., Defendants.

Order.

This cause came on for hearing this 10th day of April, 1908, upon the demurrers herein filed. The parties appeared by their respective counsel and the court, after argument, being fully advised in the premises, overrules said demurrers.

(Signed) SMITH McPHERSON, *Judge.*

189 Afterwards, towit, on the 12th day of May, 1908, the joint answer of John A. Knott, et al., was filed.
Said answer is in words and figures as follows:—

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2997.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney-General of the State of Missouri, et al., Defendants.

The Joint Answer of the Defendants John A. Knott, Frank Wightman, and H. R. Oglesby, Railroad Commissioners of the State of Missouri, to the Complainant's Amended and Supplemental Bill and the Amendment Thereto.

These defendants now, and at all times hereafter, saving to themselves all and all manner of benefit or advantage of exception, or otherwise, that can or may be had or taken to the many errors and imperfections in said Amended and Supplemental Bill of complaint, as amended, for answer thereto, or to so much thereof as they are advised is material or necessary to make answer to, answering say:

That they do hereby adopt as their Answer herein the answer of Herbert S. Hadley, Attorney-General of the State of Missouri, and all and singular the statements and averments thereof as fully as if the same were repeated herein, and they ask that the said Answer be taken in all respects as the Answer of them and of each of them.

These defendants deny that the complainant is entitled to any re-

lief whatever against these defendants, without this, that any
190 other matter, cause or thing in the complainant's amended and supplemental bill and the amendments thereto, contained, material or necessary for these defendants to make answer unto, and not herein or hereby well and sufficiently answered, confessed, traversed and avoided or denied, is true to the knowledge or belief of these defendants, or any of them; to each of which matters and things these defendants are ready and willing to aver, maintain and prove, as this Honorable Court shill direct, and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

HERBERT S. HADLEY,
Attorney General;
JOHN KENNISH,
Ass't Attorney-General;
Solicitors for Defendants.

SANFORD B. LADD,
F. W. LEHMANN,
Of Counsel.

Received copy of the above and foregoing Answer May 4, 1908.
GEO. P. B. JACKSON,
FRANK HAGERMAN,
Solicitors for Complainant.

191 Afterwards, towit, on the 12th day of May 1908 the answer of Herbert S. Hadley, Attorney General was filed. Said answer is in words and figures as follows:—

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2997.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney-General of the State of Missouri, et al., Defendants.

Answer of Herbert S. Hadley, Attorney-General of the State of Missouri, to the Complainant's Amended and Supplemental Bill and the Amendment Thereto.

This defendant now, and at all times hereafter, saving to himself all and all manner of benefit, or advantage of exception, or otherwise, that can or may be had or taken to the many errors and imperfections in said Amended and Supplemental Bill of complaint, as amended, for answer thereto, or to so much thereof as he is advised is material or necessary to make answer to, answering says:

This defendant admits Paragraphs 1, 2, 3 and 4 of the Amended and Supplemental Bill.

This defendant denies that the Governor of the State, in giving his written reasons for approving the Act of 1905, referred to or indicated that it was with some reluctance that he signed the same.

And this defendant denies that any acknowledgment was made of the invalidity of the Act of 1905, referred to in Paragraphs 5 and 6 of the Amended and Supplemental Bill; but he admits that the Legislature of the State of Missouri did pass an act, effective June 14, 1907, in words and figures as set forth in Paragraph 6 of said Amended and Supplemental Bill.

But this defendant denies that it was the purpose or the intention of the defendant herein to attempt to enforce all penalties which may accrue if the said acts are held to be illegal.

This defendant admits that the Legislature of Missouri in 1907 passed the two acts set forth in Paragraph 7 of said Amended and Supplemental Bill.

And this defendant denies that if the complainant should charge the maximum rates prescribed by the acts of the General Assembly of the State of Missouri enacted at its session in 1907, the total
192 gross receipts of the complainant from State traffic would be reduced in a very large sum, and denies that the said freight acts, or any of them, are violative of the provisions of the Constitution to the same extent as complainant has alleged with respect to the Act of 1905, or to any extent whatever.

And this defendant denies that the rates fixed by the Acts of 1907 are unreasonable and confiscatory, and less than the cost of the service.

And this defendant denies that the Governor of the State of Missouri in calling for the passage of said Act of 1907, and the Legislature in passing the same, did so for the avowed purpose of increasing certain of the maximum rates of the Act of 1905, which they conceived had in this litigation been proved to be unreasonable and confiscatory, and could not be enforced.

And this defendant denies that the rates as finally fixed by the Acts of 1907 were not on such a basis as would return a reasonable and fair compensation to the complainant upon the value of that portion of its property devoted to such use.

And this defendant denies that if the laws in existence in 1905, relative to passenger fares, had remained in force, the freight rates, as fixed by said Acts of 1907, would be unreasonable or confiscatory, or that they would not give a just return upon the value of that portion of complainant's property devoted to said traffic.

This defendant denies that the Legislature of the State acted without any fixed or definite knowledge upon the subject of rates, or that they erroneously conceived that if the increase in freight rates were necessary and were made, there could be a general equalization of rates by a decrease in the passenger rates, and that thereby, in substance, they could legally overcome and offset any advantage from an increase in freight rates by decreasing the maximum rates to be charged for said passenger traffic about 33⅓ per cent, and thus while defeating pending litigation, the public, as a whole, would not be the loser.

This defendant denies that the result was that as part and parcel of one transaction and substantially as one law, and to accomplish the purposes alleged in the Amended and Supplemental Bill, there was passed, and the Governor approved, an act called the "Passenger Act," taking effect on June 14, 1907; but this defendant admits that the act relative to passenger rates, in words and figures as set forth in said Paragraph 9 of the Amended and Supplemental Bill, was enacted by the Legislature of the State of Missouri.

And this defendant denies that the said act regulating passenger rates is violative of any provision of the Constitution of the State of Missouri, or of the United States, and denies that it is subject to any of the objections made in the original bill to the Act of 1905, and denies that any of the facts alleged in the original bill as to why the Act of 1905 should be held to be void and action thereunder restrained, are true as to the Acts of 1907, or of the said passenger act.

This defendant denies that the said Passenger Act will reduce the earnings of the complainant from its passenger business in the practical and ordinary operation of the road, or otherwise, substantially one-third, or in any amount whatsoever.

The defendant has no knowledge or information or belief as to the aggregate amount of the State passenger earnings for the year 1906, and he denies that if the passenger act aforesaid had been applied thereto, State earnings would have been reduced in any sum whatever.

193 And this defendant denies that the value of that portion of complainant's property devoted to the carriage of State business, considered as a whole, or separately, as to the passenger business only, is such in any case that the reduction in rates by said Passenger Act would fail to make a reasonable return on such valuation, and denies that it would cause such business to be done at an actual loss.

This defendant denies that the said Passenger Act was passed for the avowed purpose of reducing the State passenger rates of complainant so as to off-set and overcome the supposed increase of freight rates made under the Act of 1907, and denies that the attempt was made to frame each act so as to avoid the injunctive relief in this or in each action heretofore instituted by railroad companies operating lines in Missouri.

And this defendant denies that if the injunction be not granted herein, the complainant is without means of adequate and proper relief, or would be denied due process of law. And this defendant alleges the fact to be that in the suit instituted by the State of Missouri to require by mandamus or mandatory injunction the observance of the laws of the said State, every defense, which the complainant herein and defendant in said suit may have, could be presented and considered, and the State of Missouri is contemplating no suit of any kind which would in any manner embarrass the complainant in the assertion of any rights which it may have.

This defendant says that it is not true that the special duties devolving upon the members of the Board of Railroad Commissioners

and the Attorney-General, as stated in the original bill, apply to the Acts of 1907, and the Passenger Act aforesaid.

And this defendant denies that it is necessary or proper that the county judges and county treasurers of the State of Missouri should be made parties to this litigation, or that any private person should be drawn in as defendant thereto.

This defendant denies that the rates fixed by each, or any of the said Acts of 1907, or by said Passenger Act, or that the rates fixed by all of said acts, as a whole, are unreasonable or confiscatory, or that they will force an unreasonable reduction or confiscation of complainant's entire revenue, or of any part thereof, or that the said acts, or any of them, are in violation of the provisions of the Fourteenth Article of Amendment of the Constitution of the United States, or of any other provision of said Constitution.

And this defendant denies that to enforce the rates fixed by any of said acts would necessarily affect the interstate rates upon the same commodities. And this defendant alleges the fact to be that for many years past the complainant has voluntarily carried passengers in the State of Missouri, whose travel was wholly within the State, at the rate of two cents per mile. It has also carried many persons, other than employés of their own or other railroad companies, without exacting any compensation whatsoever, and the great bulk of passenger transportation within the State has been for many years past conducted at approximately two cents per mile, and that the charge of three cents exacted by complainant of any persons was an unjust, excessive and discriminatory charge upon such persons.

Referring to Subdivision (*b*) of Paragraph 11 of complainant's Amended and Supplemental Bill, this defendant says that the real purpose of the original Bill herein was to determine whether that portion of the property of complainant devoted to State
194 freight business, could, if the Act of 1905 were enforced, receive such return upon its value as would be fair, reasonable and not confiscatory, and that upon the trial of the three cases heard by the Special Master such was the theory adopted by both parties, and the proofs were by both of them directed to that end. And this defendant avers that the only legitimate and proper inquiry in this suit is as to the questions of law and fact arising upon the issues made by the original Bill and the Answer thereto, as to the validity of the said Act of 1905, and the results of its operation, and whether the same, if enforced, would be confiscatory and unremunerative to the complainant. Defendant asserts that the purpose of the original Bill ought not to be, and cannot, without disregard of the established rule of procedure of the Court of Chancery, be changed and perverted, to the end that the effect of the freight rate Act, or the passenger rate Act of 1907, shall be considered in this litigation, and that the only question proper to be considered or determined by this court in this action is the consequences to the complainant of the enforcement of the said Act of 1905.

This defendant denies that on the 11th day of June, 1907, the complainant filed herein a written application for leave to file an Amended and Supplemental Bill, and he denies that upon the same

day there was served upon the counsel for the defendants in the original Bill herein, and accepted by them, a written notice that a copy of the form of the said Amended and Supplemental Bill, reciting that application to file same and for a temporary injunction would be presented to this Court upon June 14, 1907, at the opening of said court at 10 a. m.

And he denies that two petitions in equity in the name and on behalf of the State of Missouri, referred to in paragraph 15 of the said Amended and Supplemental Bill, as amended, were filed by him in disregard or in contempt of the jurisdiction of this Court; and he alleges the fact in that regard to be that on the thirteenth day of June, A. D. 1907, he did, in the name and on behalf of the State of Missouri, by virtue of his office and authority as Attorney-General of the said State, file two petitions of the State of Missouri, the same being petitions in equity against the complainant herein, as defendant in the said suits, the one asking that the said complainant herein, defendant in the said suit, be required to comply with the maximum freight rates provided by the laws of the State of Missouri, enacted at the legislative session of the year 1907, and the other asking that the said complainant herein, defendant in the said suit, be required to comply with the passenger rates fixed by the laws of the State of Missouri, enacted at the legislative session of the year 1907, and the said petitions were filed in the Circuit Court of the State of Missouri in and for the City of St. Louis, the same being a court of the State of Missouri of competent and general jurisdiction, and the said petitions were filed, and the suits instituted thereby, were pending, and summons, according to the laws of the State of Missouri, issued upon the said petitions and served upon the complainant herein, defendant therein, before the hour of 10 o'clock a. m. of said 14th day of June, 1907, and before any Amended or Supplemental Bill, or any amendment to the original Bill herein was filed by the complainant, or before any such amended or Supplemental Bill, or amendment to the original Bill was presented to this Court for consideration.

And this defendant alleges further that the said petition in equity, so as aforesaid filed by him in the Circuit Court of the City of St. Louis, relative to the freight rates, has been dismissed by him,
195 and is no longer pending, but that the said petition in equity, so as aforesaid filed by him in the Circuit Court of the City of St. Louis, relative to the passenger rates, is still pending and undetermined.

And this defendant admits that the said Circuit Court of the City of St. Louis did on the said 13th day of June, A. D. 1907, issue its restraining order, returnable upon the — day of June, 1907, in the said suit in equity relative to the said passenger rates, requiring the complainant herein, and defendant therein, to comply with the law of the State of Missouri in that behalf.

This defendant admits that upon the 14th day of June, 1907, at 10 a. m., there were presented to this Court the application of complainant for leave to file its Amended and Supplemental Bill, and for a temporary injunction, and that a continuance of the hearing

of said application for one day was granted by the said court, and that this Court, upon its own motion, made the orders stated and referred to in Paragraph 16 of the said Amended and Supplemental Bill, as amended.

This defendant admits that upon June 17, 1907, this Court made and entered the order set forth in Paragraph 17 of the said Amended and Supplemental Bill, as amended.

And this defendant further admits that subpœnas have been issued, as by said order provided, and served upon this defendant.

This defendant admits that upon June —, 1907, the said Circuit Court of the City of St. Louis, upon the application of this defendant, entered an order dismissing the petition in equity of the State of Missouri theretofore filed by him relative to the freight rates prescribed by the laws of the State of Missouri, and that upon the same day, upon his application, the said court entered an order setting aside the restraining order previously issued by it in the suit in equity of the State of Missouri against this complainant, as defendand therein, relative to the passenger rates prescribed by the laws of the State of Missouri.

And this defendant avers that he made his application to set aside the said restraining order because this complainant had put into effect the passenger rates prescribed by the laws of the State of Missouri and was fully observing the same, and has continued so to do to the present time.

This defendant admits that he did not dismiss the said suit in equity, relative to the passenger rates, and has insisted that it should remain pending, and that it is his purpose to proceed therewith, if the complainant herein, defendant in the said suit, shall, at any time hereafter, cease to comply with the laws of the State of Missouri relative to passenger rates in said State.

And this defendant denies that the said State court has no jurisdiction in the premises, or that it has no right or power to compel complainant herein and defendant in the said suit, to put in force the passenger rates referred to, and he denies that any action by the said court would deny to complainant the protection accorded to it by the Fourteenth Amendment to the Constitution of the United States, and he alleges the fact in that regard to be that the said Circuit Court of the City of St. Louis is a court of competent and general jurisdiction, having jurisdiction alike of the person of the complainant herein, defendant in the suit pending in the said Circuit Court of the City of St. Louis, and that due process of law can and will be had by the complainant herein, defendant in the said suit, in the said suit, and any defense that it may have to the said suit in equity, so as aforesaid brought by the State of Missouri
196 in said Circuit Court of the City of St. Louis, can and will be fully and fairly heard by said Circuit Court of the City of St. Louis, and any rights which the complainant herein, defendant in the said suit, in said State court may have, will be fully conserved and protected.

This defendant denies that the facts alleged in Paragraphs 13 to 18, inclusive, of the Amended and Supplemental Bill, as amended,

are true as to each or any of the several railroad companies named in Paragraph 20 of the said Amended and Supplemental Bill, as amended, except as they correspond with the admissions and averments hereinbefore set forth in this Answer.

This defendant admits that each of said companies had filed original bills in this Court similar to the original bill filed by the complainant herein.

This defendant also admits that the suits in equity brought by the State of Missouri were brought against the several railroad companies named in said Paragraph 20 either in the Circuit Court of Jackson county, or in the Circuit Court of the City of St. Louis, as in said paragraph stated.

And this defendant admits that it is his purpose to prosecute the said suits in equity, so brought by the State of Missouri in its said courts, in relation to the passenger rates, in the event that the said companies, defendants in said suits, shall fail to continue in observance of the passenger rates prescribed by the laws of the State of Missouri.

And this defendant denies that as to any of the complainants in the suits pending in the Circuit Court of the United States, defendants to the suits brought by the State of Missouri, restraining orders from the said State courts were served in the court room of this Court while the said parties, or any of them, were presenting applications to this Court upon June 14, 1907, but, on the contrary, this defendant alleges the fact to be in that regard that the said restraining orders were all served upon the proper officers of the said companies at their respective offices.

And this defendant denies that the said passenger Act of 1907, and that each or any of the freight acts of the State of Missouri of 1907, is void and of no effect, for the reason that it is an attempt to deprive complainant of its property without due process of law, or denies the complainant the equal protection of the law, and he alleges the fact in that regard to be that the said passenger act of 1907 is a reasonable and proper regulation of passenger rates in the State of Missouri, and that each of said freight acts of 1907 is a reasonable and proper regulation of rates for the transportation of freight; and that the said rates so prescribed by the said several acts of the General Assembly of the State of Missouri, and each of them, prescribe fair, proper and remunerative rates for the service to which the said acts severally relate.

And this defendant denies that the penalties provided by the said acts for a violation of them are harsh and unreasonable, or that they could in anywise be made burdensome, except through a persistent and continued disregard of the law by the said complainant.

This defendant denies that the said acts, or any of them, influence, affect or bear upon interstate freight and passenger traffic, or that they, or any of them, fix and regulate interstate freight and passenger traffic.

As to whether the Kansas City, Clinton & Springfield Railway Company, and the St. Louis & San Francisco Railroad Company, between Kansas City and Springfield, are of substantially the same

length, or as to whether the line of the former between those points extending into and out of Kansas, or whether all its carriage
197 between said points is interstate, or whether the other company has one line which in its course runs into and out of a portion of Kansas, and another separate line between said points which extends wholly through Missouri, or whether the carriage between said points upon one line is interstate and upon the other state; or whether between Joplin and Kansas City there are three trunk lines of substantially the same length, some of which are within the State, and some of which are without the State, or whether all of the traffic on some of said lines between Joplin and Kansas City is State, and on other of said lines, between said points, is interstate; or whether between St. Louis and St. Joseph, Missouri, the line of the Chicago, Burlington & Quincy Railroad Company does not pass out of the State, or whether the traffic on said road between said points on said line is wholly State; or whether the line of the Missouri Pacific Railway Company between said St. Louis and St. Joseph in its course passes into and out of the state of Kansas, or whether the entire traffic upon said railway between said points is interstate; or whether between Kansas City and St. Joseph, Missouri, there are four trunk lines of substantially equal length, some of which are wholly within Missouri, and upon some of which all their traffic between said points is State, or whether the lines of some of them pass into and out of Kansas, or the entire traffic upon them, between said points, is wholly interstate, this defendant has no knowledge, information or belief.

This defendant admits that some of the large and populous communities of the State are upon its eastern and western borders. He admits that the main course of part of the traffic through the State is east and west. He has no knowledge, information or belief as to whether any of the railroads in the State either operate lines extending into other states, or into the state of Kansas or Illinois, or whether any of them have joint freight and passenger traffic arrangements with lines running into those states, or interstate carriage for freight and passengers.

As to whether the interstate passenger rates are higher than those fixed by the passenger act of 1907, or whether passengers starting from points in Missouri to go to other States buy tickets at two cents a mile to the last station in Missouri upon its border, and then buy tickets or pay fare from thence to their interstate destination, and vice versa, this defendant has no knowledge, information or belief.

As to what the interstate rate from St. Louis to Topeka, Kansas, is, or has been, this defendant has no knowledge, information or belief; or as to whether a passenger starting from St. Louis for Topeka buys his tickets in the manner stated in the Amended and Supplemental Bill, as amended.

He denies that the lowering of the State rate for the transportation of passengers necessarily affects, fixes or lowers the interstate passenger rate, and he denies that the same is true of the freight traffic.

This defendant denies that the complainant is entitled to any relief whatever against this defendant, without this, that any other matter,

cause or thing in the complainant's Amended and Supplemental Bill and the amendments thereto, contained, material or necessary for this defendant to make answer unto, and not herein or hereby well and sufficiently answered, confessed, traversed and avoided or denied, is true to the knowledge or belief of this defendant; all which matters and things this defendant is ready and willing
198 to aver, maintain and prove, as this Honorable Court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

HERBERT S. HADLEY,
Attorney General;
JOHN KENNISH,
Assistant Attorney-General,
Solicitors for Defendant.

SANFORD B. LADD,
F. W. LEHMANN,
Of Counsel.

Received copy of the above and foregoing Answer May 4, 1908.

GEO. P. B. JACKSON,
FRANK HAGERMAN,
Solicitors for Complainant.

199 Afterwards, to wit, on the 1st day of June, A. D. 1908, the replication of complainant to the joint answer of John A. Knott et al., was filed.

Said replication is in words & figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2997.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendants.

Replication of Complainant to the Joint Answer of John A. Knott, Frank Wightman and H. R. Oglesby, Railroad Commissioners of the State of Missouri, to the Complainant's Amended and Supplemental Bill and the Amendment Thereto.

This replicant saving and reserving to itself all and all manner of advantage of exception which may be had or taken to the manifold errors, uncertainties and insufficiencies of the answer of the said defendants for replication thereunto, saith: That it does and will aver, maintain and prove its said bill to be true, certain and sufficient in the law to be answered unto by the said defendants, and that the

answer of the said defendants is very uncertain, evasive and insufficient in law to be replied unto by this replicant; without that, that any other matter or thing in the said answer contained, material or effectual in law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this replicant is ready to aver, maintain and prove as this honorable court shall direct, and humbly prays as in and by its said bill it hath already prayed.

JAMES HAGERMAN,
GEORGE P. B. JACKSON,
JOSEPH M. BRYSON,
Solicitors for Complainant.

FRANK HAGERMAN,
Of Counsel.

200 Afterwards, to wit, on the 1st day of June, A. D. 1908, the replication of complainant to the answer of Herbert S. Hadley, Attorney General, was filed.

Said replication is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2997.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendants.

Replication of Complainant to the Answer of Herbert S. Hadley, Attorney General of the State of Missouri, to the Complainant's Amended and Supplemental Bill and the Amendment Thereto.

This replicant saving and reserving to itself all and all manner of advantage of exception which may be had or taken to the manifold errors, uncertainties and insufficiencies of the answer of the said defendants for replication thereunto, saith: That it does and will aver, maintain and prove its said bill to be true, certain and sufficient in the law to be answered unto by the said defendant, and that the answer of the said defendant is very uncertain, evasive and insufficient in law to be replied unto by this replicant; without that, that any other matter or thing in the said answer contained, material or effectual in law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this replicant is ready to aver, maintain and prove as this

honorable court shall direct, and humbly prays as in and by its said bill it hath already prayed.

JAMES HAGERMAN,
GEO. P. B. JACKSON,
JOSEPH M. BRYSON,
Solicitors for Complainant.

FRANK HAGERMAN,
Of Counsel.

201 Afterwards, to-wit, on the 13th day of June, 1908, the following order was filed and entered of record, to-wit:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General, et al., Defendants.

And also

In Equity.

RAILROAD COMPANIES
vs.
HERBERT S. HADLEY, Attorney General, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004, and 3006.

Order.

Causes numbered 2988, 2989, 2990, 2991, 2995, 2997, 3001, 3002, 3003 and 3006 came on for hearing this June 13, 1908, upon the application of complainants to at once set down for hearing their applications for temporary injunctions. The parties appeared by counsel, the defendants insisting that such hearing be postponed for a period of ninety days, and the court being fully advised in the premises,

Orders

1. The Special Master shall file herein so much of the testimony as has been taken in any of the 18 cases.

2. Orders on the applications to set down for hearing at once the motions for temporary injunctions are deferred for the present, and in lieu thereof by consent of counsel all of the 18 cases are set for final hearing the 5th day of October, 1908, or as soon thereafter as the court can hear the same upon such evidence as has been heretofore taken and such further oral and documentary evidence as then may be offered under the 67th rule in equity as amended.

(Signed) SMITH McPHERSON, *Judge.*

202 Afterwards, to-wit, on the 13th day of June, 1908, an affidavit was filed. Said affidavit is in words and figures as follows, to-wit:

STATE OF MISSOURI,
City of St. Louis, ss:

T. F. Wharton, being first duly sworn, says that he is Manager of the Saint Louis Office of Haskins & Sells, Certified Public Accountants, and has been for the past three years; that the firm of Haskins & Sells has been employed by the State of Missouri for the past two years as expert accountants in connection with the Maximum Freight Rate Litigation and the Passenger Rate Litigation; and that as Manager of the Saint Louis Office, this affiant has been connected with all of said work and is familiar therewith and with the length of time required for such work; that he was asked by the Attorney General on the 9th day of June, 1908, to come to Jefferson City for the purpose of making an examination of statements filed on that date by the following named railroads:

Missouri Pacific Railway Company,
Missouri, Kansas & Texas Railway System,
Chicago Great Western Railway Company,
Chicago, Rock Island & Pacific Railway Company,
St. Louis & San Francisco Railroad Company,
St. Louis Southwestern Railway Company,
Chicago & Alton Railroad Company,
St. Joseph & Grand Island Railway Company,
Kansas City, Clinton & Springfield Railway Company,
Atchison, Topeka & Santa Fe Railway Company,

such examination to be made in order to determine the length of time necessary for the verification of the reports submitted by the aforesaid railroad companies and for the preparation of reports in relation thereto; that on the 10th day of June, 1908, this affiant went to Jefferson City for the purpose indicated; that he then received from Attorney General Hadley the statements referred
203 to, and more particularly described in Exhibits "A" to "J" hereto attached and made a part of this affidavit; Further, that in order to properly pass upon the reports referred to, it will be necessary, First, to verify the clerical accuracy of the figures themselves; Second, to verify the correctness of the comparisons made where there have been such comparisons; and where no comparisons have been made, it will be necessary to prepare, or to have prepared, proper comparative statements; Third, to verify the correctness of the division of expenses between freight and passenger business and between state and Inter-State business; and Fourth, it will be necessary to compare the method used in dividing expenses with the method by which such expenses were divided by the Missouri Pacific, Burlington and Wabash Railroads, in the testimony already heard in the Maximum Freight Rate cases. In addition to this, it will be necessary to secure information in other states, where there has been

no change in Passenger Rates during the past two years, as to the effect on Passenger earnings of the business depression, which began about the middle of October, 1907. It will also be necessary to secure from other states where the two cent passenger law has been in effect for some time, information showing the effect of the operation of the law on the earnings of the railroad companies.

In view of the amount of work above outlined that it will be necessary to do in connection with the statements hereinbefore referred to, this affiant believes that it will require the services of four or five experienced accountants for about three months to make the necessary verifications, prepare the necessary statistics, and place in proper form all such matter for the information of the Court.

T. F. WHARTON.

Subscribed and sworn to Before me this 11th day of June, 1908. Commission expires July 14, 1911.

[SEAL.] FRANK WELLER,
Notary Public, City of St. Louis, Mo.

NOTE.—In the attached exhibits, the word "State" is used to indicate "Intra-State" business.

204 EXHIBIT "A."

Missouri Pacific Railway Company.

Statements Showing Passenger Earnings by Months for the Six Months Ended December 31, 1907 *and* 1906, *Divided Between State and Interstate, with Expenses for the Periods Named; Also Reports Showing Freight Earnings and Expenses for the Same Periods.*

Method of dividing expenses and charges between freight and passenger, and State and Inter-State business is not shown.

Summary of Intrastate Passenger Business Only as Shown by Statements for the Six Months Ended December 31.

	1907.	1906.	Increase.
July to October.....	$580,056.65	$564,593.97	$15,462.68
November and December	218,420.34	245,212.35	26,792.01*†
Total.....	$798,476.99	$809,806.32	$11,329.33*†
Operating Expenses....	728,676.35	664,730.09	63,946.26
Net Earnings.....	$69,800.64	$145,076.23	$75,275.59*†
Charges, not Including Interest	23,870.87	8,582.45*	32,453.32
Available for Interest and Dividends.....	$45,929.77	$153,658.68	$107,728.91*†

[*In red ink in copy.]
† Decrease.

205 EXHIBIT "B."

Missouri, Kansas & Texas Railway System.

Various Monthly Statements of Passenger and Freight Earnings and Expenses for the Period from June 19 to December 31, 1907, with Statements by Months for the Period from June 19 to September 18, 1907 and 1906.

State and Inter-state business is not separated in reports.

Method of dividing expenses between freight and passenger business is not shown.

Summary of Passenger Earnings, Expenses and Charges, as Shown by Statements, for the Periods from June 19 to September 18.

	1907.	1906.	Increase.
Revenue	$365,573.83	$318,861.06	$46,712.77
Operating Expenses	235,619.96	225,148.53	10,471.43
Net Earnings	$129,953.87	$93,712.53	$36,241.34
Taxes and Rentals	25,381.17	27,261.31	1,880.14*†
Available for Interest and Dividends	$104,572.70	$66,451.22	$38,121.48

[*In red ink in copy.]
† Decrease.

206 EXHIBIT "C."

Chicago Great Western Railway Company.

Statements (Supposed to be Filed by this Company) Showing Passenger Earnings Only by Months for the Periods from June 19 to September 18, 1907 and 1906, and Also for the Three Months Ended September 30, 1907 and 1906, Divided Between State and Inter-State.

No expenses are given.

Summary of Passenger Earnings, as Shown by Statements for the Periods from June 19 to September 18.

	1907.	1906.	Decrease
Intra-State	$12,568.23	$14,604.75	$2,036.52
Missouri to Other States.	19,423.07	21,753.31	2,330.24
Other States to Missouri.	20,297.69	18,783.71	1,513.98*†
Other States through Missouri	1,225.86	1,047.64	178.22*†
Between Points in Missouri Through Kansas.	4,181.53	4,292.36	110.83
Total	$57,696.38	$60,481.77	$2,785.39

[*In red ink in copy.]
† Increase.

207 EXHIBIT "D."

Chicago, Rock Island & Pacific Railway Company.

Statement (Tentative Figures Only) for Period from June 19 (6 A. M.) to and Including September 18, 1907 and 1906, of Passenger and Freight Earnings, Expenses and Taxes.

Business is not divided between State and Inter-state.
Method of dividing expenses is not given.

Summary of Passenger Earnings, Expenses and Taxes, as Shown by Statement, for the Period Mentioned Above.

	1907.	1906.	Increase.
Revenue	$271,240.36	$246,701.04	$24,539.32
Operating Expenses:			
Maintenance of Way and Structures	$113,162.23	$85,857.89	$27,304.34
Maintenance of Equipment	48,251.58	37,947.48	10,304.10
Other Expenses	162,531.00	163,760.05	1,229.05*†
Total	$323,944.81	$287,565.42	$36,379.39
Deficit from Operations	$52,704.45	$40,864.38	$11,840.07
Taxes	5,411.14	3,946.88	1,464.26
Deficit before deducting Interest, etc	$58,115.59	$44,811.26	$13,304.33

[*In red ink in copy.]
† Decrease.

208 EXHIBIT "E."

St. Louis & San Francisco Railroad Company.

Statements by Months and in Total for the Three Months Ended September 30, 1907, of State and Inter-State Passenger and Freight Earnings, Expenses and Charges.

Method of dividing expenses and charges between Freight and Passenger business is not shown: Expenses and Charges, and Miscellaneous earnings are divided between State and Inter-State business on the basis of the actual earnings of each class of business.

No comparisons are made with the same periods of the previous year, under three-cent law.

Summary of Intra-State Passenger Business, as Shown by Statements, for the Three Months Ended September 30, 1907.

Revenue	$718,992.65
Operating Expenses	599,298.01
Net Earnings	$119,694.64
Taxes and Rentals	24,104.07
Available for Interest and Dividends	$95,590.57

209 EXHIBIT "F."

St. Louis Southwestern Railway Company.

Statement for Six Months Ended December 31, 1907, of State and Inter-State Passenger and Freight Earnings, Expenses and Charges, with Memorandum of Bases Used in Dividing Revenues, Expenses and Charges between Freight and Passenger and State and Inter-State Business.

Expenses are divided between Freight and Passenger business generally on basis of revenue train-miles. Expenses are divided between State and Inter-State business on basis of number of passengers one mile. Taxes are divided on basis of freight and passenger revenue of each class.

No comparisons are made with same period of previous year, under three-cent law.

Summary of Intra-State Passenger Earnings and Expenses, as Shown by Statement, for the Six Months Ended December 31, 1907.

Revenue	$29,625.21
Operating Expenses	31,407.27
Loss from Operation	$1,782.06
Taxes and Sundry Charges (Less Other Income)	1,224.67
Total Loss, before deducting Interest	$3,006.73

NOTE.—During the same period, the Inter-State business shows a profit, before deducting interest, of $12,589.49.

210 EXHIBIT "G."

Chicago & Alton Railroad Company.

Statements for the Month of September, 1907, and the Three Months Ended September 30, 1907, and for the Month of October, 1907, and the Four Months Ended October 31, 1907, of Passenger Earnings, Expenses and Fixed Charges, Divided between State and Inter-State Business.

Method of apportioning expenses and charges to Passenger business *are* not shown. The method of dividing expenses between State and Inter-State business is not shown; but it is evidently on basis of passenger miles; charge divided between State and Inter-State Passenger business on basis of passenger miles.

No comparisons are made with same periods of previous year, under three-cent law.

Summary of Intra-State Passenger Earnings and Expenses, as Shown by Statements, for Four Months Ended October 31, 1907

Revenue	$193,822.87
Operating Expenses	116,267.44
Available for Interest and Charges	$77,555.43
Amount of Interest and Charges	62,283.85*
Surplus for the period	$15,271.58

*Amount of Interest alone not given.

211 EXHIBIT "H."

St. Joseph & Grand Island Railway Company.

Statement of Passengers Carried and Revenue Received, by Months, for the Six Months Ended December 31, 1907 and 1906, Divided between State and Inter-State.

No expenses are given.

Summary of Passenger Earnings, as Shown by Statements, for the Six Months Ended December 31.

	1907.	1906.	Increase.
Intra-State	$20,101.43	$25,115.93	$5,014.50
Inter-State	9,718.42	11,384.51	1,666.09
Total	$29,819.85	$36,500.44	$6,680.59

212 EXHIBIT "I."

Kansas City, Clinton & Springfield Railway Company.

Statements of Passengers Carried and Revenue Received, by Months, with Expenses Charged to Passenger Traffic, for the Period from June 19 to November 30, 1907 and 1906.

Expenses are not divided between State and Inter-State business. The method of apportioning expenses to Passenger business is not given.

Summary of Passenger Earnings and Expenses, as Shown by Statements, for the Periods Shown Above.

Earnings:	1907.	1906.	Increase.
Intra-State	$24,319.00	$26,159.57	$1,840.57*†
Inter-State	22,171.38	22,043.20	128.18
Total	$46,490.38	$48,202.77	$1,712.39*†
Operating Expenses	92,633.11	92,378.03	255.08
Deficit from Operations	$46,142.73	$44,175.26	$1,967.47

[*In red ink in copy.]
† Decrease.

213 EXHIBIT "J."

Atchison, Topeka & Santa Fe Railway Company.

Statements for the Months of July, August, and September, 1907 and 1906, Showing Passenger and Freight Business, with Expenses of Each, and Statements for the Three Months Ended September 30, 1907, and 1906, Showing Passenger and Freight Earnings, Expenses, and Charges Divided Between State and Interstate Business.

Method of dividing expenses and charges between freight and passenger business is not shown. Expenses are divided between State and Inter-State business on basis of earnings of each class of business.

Summary of Intrastate Passenger Business, as Shown by Statements for the Three Months Ended September 30.

	1907.	1906.	Increase.
Revenue from Passengers.	$56,329.47	$50,959.63	$5,369.84
Excess Baggage, Mail, Express, etc.	24,531.16	24,162.71	368.45
Total	$80,860.63	$75,122.34	$5,738.29

Operating Expenses:			
Maintenance of Way and Structures	$31,779.37	$28,871.00	$2,908.37
Maintenance of Equipment	9,984.00	7,375.10	2,608.90
Other Expenses	28,706.04	27,955.42	750.62
Total	$70,469.41	$64,201.52	$6,267.89
Net Earnings	$10,391.22	$10,920.82	$529.60*†
Taxes and Rentals	1,647.99	1,624.68	23.31
Available for Interest and Dividends	$8,743.23	$9,296.14	$552.91*†

[*In red ink in copy.]
*†Decree.

214 Afterwards, to-wit, on the 13th day of June, 1908, a Notice was filed. Said Notice is in words and figures as follows:—

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General, et al., Defendants.

And also

In Equity.

RAILROAD COMPANIES
v.
HERBERT S. HADLEY, Attorney General, et al., Being Cases Numbered 2989, 2990, 2991, 2995, 2997, 3001, 3002, 3003, and 3006.

Notice.

Complainants in above numbered cases will, upon June 13th 1908, at 10 o'clock a. m., or as soon thereafter as counsel can be heard, make application to the court to set down for hearing the applications for temporary injunctions therein pending.

FRANK HAGERMAN,
Solicitor for Complainants.

Received copy of above notice this June 8th, 1908.

HERBERT S. HADLEY,
Attorney General.
JOHN KENNISH,
SANFORD B. LADD,
F. W. LEHMANN,
Solicitors.

215 Afterwards, to-wit, on the 21st day of September, 1908, the Master's Return to Order of June 13, 1908, was filed. Said Master's Return is in words and figures as follows:—

Circuit Court of the United States, Western Division of the Western District of Missouri.

No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY
vs.
HERBERT S. HADLEY, Attorney General, et al.

Also

RAILROAD COMPANIES
vs.
HERBERT S. HADLEY, Attorney General, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004, and 3006.

Master's Return to Order of June 13, 1908, *with All Testimony Taken.*

To the Honorable the Judges of said Court:

In obedience to the order entered in the above mentioned cases, bearing date of June 13, 1908, the undersigned Special Master herewith returns all the testimony taken before him in the three cases in which testimony was taken, viz. the cases of the Missouri Pacific Railway Company, The Chicago, Burlington & Quincy Railway Company, and the Wabash Railroad Company, together with all the exhibits referred to in said testimony, and being all the testimony taken in any of the said eighteen cases.

Respectfully submitted,

F. L. SCHOFIELD,
Special Master.

Hannibal, Mo., September 18th, 1908.

216 Afterwards, to-wit, on the 5th day of October, 1908, the following order was filed and entered of record:—

In the Circuit Court of the United States, Western District of Missouri.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General, et al., Defendants.

And also

RAILROAD COMPANIES
against
HERBERT S. HADLEY, Attorney General, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004, 3006, All in Equity in said Court.

Orders.

These cases come on for further hearing this October 5th, 1908, pursuant to the orders in all said cases made June 13th, 1908.

And the Court orders that each, all and every of said eighteen (18) cases be and the same are hereby continued until November ninth (9th) A. D. 1908, at ten o'clock A. M., at which time all of said cases will be called for trial, and the trials will then proceed from day to day until concluded. And said cases will be heard and decrees rendered on the evidence heretofore taken before the Special Master, and on such oral testimony and documentary evidence as may be offered by any of the parties to said cases pursuant to General Equity Rules 67 as amended. The evidence taken in any one of said cases shall be used in each, all and every of the other seventeen (17) cases in so far as the same will be pertinent or germane.

217 Said cases will be called and heard in the numerical order given said cases by the clerk; that is to say, the case with the lowest numerical number to be first heard, and the next lowest number next heard, and so on until all said cases are heard.

All agreements between any of the parties in any of said cases, whether such agreements are recited in orders of this court or by the Special Master, or whether such agreements are otherwise in writing, or verbally made, are hereby cancelled and will not be regarded by the Court, and future agreements, if any, will only be considered by the Court when reduced to writing and signed by the parties and filed with the clerk in said case or cases.

However, the orders, made in said cases June 13th, 1908, and the agreements therein recited are fully ratified and confirmed except only as to the change of date for hearing from October 5th, 1908 to November 9th, 1908.

And the applications for temporary injunction are continued until November 9th, 1908, or until such later time as said applications may be presented, and the court may be able to hear the same.

Done in open court this October 5th, 1908.

(Signed) SMITH McPHERSON, *Judge.*

Afterwards, to-wit, on the 14th day of December, 1908, the following order was filed and entered of record, to-wit:

UNITED STATES OF AMERICA, *sct:*

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD CO.
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al.

Also

218 In Equity.

RAILROAD COMPANIES
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004, and 3006.

MONDAY, *November* 9, *A. D.* 1908.

This day come the parties by their solicitors, the complainant by W. F. Evans, Esq., and Frank Hagerman, Esq., and the defendants by the Honorable Herbert S. Hadley, F. H. Lehmann, Esq., and Sanford B. Ladd, Esq. Thereupon this cause coming on regularly for final hearing, evidence on the part of complainant is begun and the same not being concluded at the hour of adjournment, further proceedings are postponed until tomorrow morning.

(Signed) SMITH McPHERSON, *Judge.*

Afterwards, to-wit, on the 14th day of December, 1908, the following order was filed and entered of record, to-wit:—

UNITED STATES OF AMERICA, *sct:*

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD CO.
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al.

Also

In Equity.

RAILROAD COMPANIES
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004, and 3006.

TUESDAY, *November* 10, 1908.

Now on this day again come the parties by their solicitors. Thereupon the hearing of evidence on the part of complainant is proceeded with and the same not being concluded at the hour of adjournment, further proceedings are postponed until tomorrow morning.

(Signed) SMITH McPHERSON, *Judge.*

219 Afterwards, to-wit, on the 14th day of December, 1908, the following order was filed and entered of record, to-wit:

UNITED STATES OF AMERICA, *sct:*

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD CO.
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al.

Also

In Equity.

RAILROAD COMPANIES
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004, and 3006.

WEDNESDAY, *November* 11, 1908.

Now on this day again come the parties by their solicitors. Thereupon the hearing of evidence on the part of complainant is pro-

ceeded with and the same not being concluded at the hour of adjournment, further proceedings are postponed until tomorrow morning.

(Signed) SMITH McPHERSON, *Judge.*

Afterwards, to-wit, on the 14th day of December, 1908, the following order was filed and entered of record:—

UNITED STATES OF AMERICA, *sct:*

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD CO.

VS.

220 HERBERT S. HADLEY, Attorney General of the State of Missouri, et al.

Also

In Equity.

RAILROAD COMPANIES

VS.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004, and 3006

THURSDAY, *November* 12, 1908.

Now on this day again come the parties by their solicitors. Thereupon the hearing of evidence on the part of complainant is proceeded with and the same not being concluded at the hour of adjournment, further proceedings are postponed until tomorrow morning.

(Signed) SMITH McPHERSON, *Judge.*

Afterwards, to-wit, on the 14th day of December, 1908, the following order was filed and entered of record, to-wit:

UNITED STATES OF AMERICA, *sct:*

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD CO.

vs.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al.

Also

In Equity.

RAILROAD COMPANIES

vs.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004, and 3006.

FRIDAY, *November* 13, 1908.

Now on this day again come the parties by their solicitors. Thereupon the hearing of evidence on the part of complainant is proceeded with and the same not being concluded at the hour of ad-
221 journment, further proceedings are postponed until tomorrow morning.

(Signed) SMITH McPHERSON, *Judge.*

Afterwards, to-wit, on the 14th day of December, 1908, the following order was filed and entered of record:—

UNITED STATES OF AMERICA, *sct:*

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD CO.

vs.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al.

Also

In Equity.

RAILROAD COMPANIES

vs.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004, and 3006.

SATURDAY, *November* 14, 1906.

Now on this day again come the parties by their solicitors. Thereupon the hearing of evidence on the part of complainant is proceeded

with and the same not being concluded at the hour of adjournment, further proceedings are postponed until Monday, December 14th.

(Signed) SMITH McPHERSON, *Judge.*

Afterwards, to-wit, on the 15th day of December, 1908, the following order was filed and entered of record, to-wit:

222 UNITED STATES OF AMERICA, *sct:*

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD CO.
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al.

Also

In Equity.

RAILROAD COMPANIES
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004, and 3006.

Now on this day again come the parties by their solicitors. Thereupon the hearing of evidence on the part of complainant is proceeded with and the same not being concluded at the hour of adjournment, further proceedings are postponed until tomorrow morning.

(Signed) SMITH McPHERSON, *Judge.*

Monday, December 14, 1908.

Afterwards, to-wit, on the 16th day of December, 1908, the following order was filed and entered of record:—

UNITED STATES OF AMERICA, *sct:*

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD CO.

vs.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al.

Also

In Equity.

RAILROAD COMPANIES

vs.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004, and 3006.

223 Now on this day again come the parties by their solicitors. Thereupon the hearing of evidence on the part of complainant is proceeded with and the same not being concluded at the hour of adjournment, further proceedings are postponed until tomorrow morning.

(Signed) SMITH McPHERSON, *Judge.*

Tuesday, December 15, 1908.

Afterwards, to-wit on the 17th day of December, 1908, the following order was filed and entered of record, to-wit:—

UNITED STATES OF AMERICA, *sct:*

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD CO.

vs.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al.

Also

In Equity.

RAILROAD COMPANIES

vs.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004, and 3006.

Now on this day again come the parties by their solicitors. Thereupon the hearing of evidence on the part of complainant is proceeded

with and the same not being concluded at the hour of adjournment, further proceedings are postponed until tomorrow morning.

(Signed) SMITH McPHERSON, *Judge.*

Wednesday, December 16, 1908.

224 Afterwards, to-wit, on the 18th day of December, 1908, the following order was filed and entered of record, to-wit:

UNITED STATES OF AMERICA, *sct:*

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD CO.
VS.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al.

Also

In Equity.

RAILROAD COMPANIES
VS.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004, and 3006.

Now on this day again come the parties by their solicitors. Thereupon the hearing of evidence on the part of complainant is proceeded with and the same not being concluded at the hour of adjournment, further proceedings are postponed until tomorrow morning.

(Signed) SMITH McPHERSON, *Judge.*

Thursday, December 17, 1908.

Afterwards, to-wit, on the 19th day of December, 1908, the following order was filed and entered of record, to-wit:—

UNITED STATES OF AMERICA, *sct:*

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD CO.

vs.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al.

225 Also

In Equity.

RAILROAD COMPANIES

vs.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004, and 3006.

Now on this day again come the parties by their solicitors. Thereupon the hearing of evidence on the part of complainant is proceeded with and the same not being concluded at the hour of adjournment, further proceedings are postponed until tomorrow morning.

(Signed) SMITH McPHERSON, *Judge.*

Friday, December 18, 1908.

Afterwards, to-wit, on the 21st day of December, 1908, the following order was filed and entered of record, to-wit:—

UNITED STATES OF AMERICA, *sct:*

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD CO.

vs.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al.

Also

In Equity.

RAILROAD COMPANIES

vs.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004, and 3006

This day again come the parties by their attorneys. Thereupon evidence on the part of the complainant, St. Louis & San Francisco

Railroad Co., is concluded and further proceedings are postponed until next Tuesday morning at nine o'clock.

(Signed) SMITH McPHERSON, *Judge.*

Saturday, December 19, 1908.

226 Afterwards, to-wit, on the 22nd day of December, 1908, the following order was filed and entered of record, to-wit:—

UNITED STATES OF AMERICA, *sct:*

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD CO.
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al.

Also

In Equity.

RAILROAD COMPANIES
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004, and 3006.

Now on this day again come the parties by their solicitors. Thereupon the hearing of evidence on the part of defendants is begun and the same not being concluded at the hour of adjournment, further proceedings are postponed until tomorrow morning.

(Signed) SMITH McPHERSON, *Judge.*

Tuesday, December 22, 1908.

Afterwards, to-wit, on the 23rd day of December, 1908, the following order was filed and entered of record, to-wit:—

UNITED STATES OF AMERICA, *sct:*

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD CO.
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al.

Also

227 In Equity.

RAILROAD COMPANIES
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004, and 3006.

This day again come the parties by their attorneys. Thereupon further evidence upon the part of the defendants is heard and the same not being concluded at the hour of adjournment, further proceedings are postponed until Monday, December 28, 1908, at nine o'clock.

(Signed) SMITH McPHERSON, *Judge.*

Wednesday, December 23, 1908.

Afterwards, to-wit, on the 28th day of December, 1908, the following order was filed and entered of record, to-wit:—

UNITED STATES OF AMERICA, *sct:*

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD CO.
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al.

Also

In Equity.

RAILROAD COMPANIES
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004, and 3006.

This day again come the parties by their solicitors. Thereupon

the hearing of evidence is proceeded with and further proceedings are postponed until tomorrow morning.

(Signed) SMITH McPHERSON, *Judge.*

December 28, 1908.

228 Afterwards, to-wit, on the 29th day of December, 1908, the following order was filed and entered of record, to-wit:—

UNITED STATES OF AMERICA, *sct:*

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD CO.
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al.

Also

In Equity.

RAILROAD COMPANIES
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004, and 3006.

This day again come the parties by their solicitors. Thereupon the hearing of evidence is proceeded with and further proceedings are postponed until tomorrow morning.

(Signed) SMITH McPHERSON, *Judge.*

December 29, 1908.

229 Afterwards, to-wit, on the 30th day of December, 1908, Complainant's Requests for findings of facts *was* filed Said Requests for Findings of Fact are in words and figures as follows, to-wit:

Complainants' Requests for Findings of Fact.

1. The complainants are the eighteen railroad corporations owning and operating lines of railway in Missouri, engaged generally in doing therein with the same property, the entire state and interstate railroad business. With the exception hereinafter stated as to the St. Louis & Hannibal and the Kansas City, Clinton & Spring-

field, they constitute great trunk lines of railroads, carrying in and through Missouri the commerce of the country, state and interstate, reaching and connecting various commercial centers like Chicago, St. Louis, Kansas City, Omaha, Denver, St. Paul, Memphis, New Orleans and Galveston. Some of them, like the Atchison, Topeka & Santa Fe and the Chicago, Rock Island & Pacific operate through trans-state trains, running from Chicago to the Pacific Ocean. All operate, in connection with other roads at connecting points and large centers so as to carry all the traffic of the state, freight and passenger, not only that which is state but also that which is interstate, and that which is destined to and from other roads and other states. The interstate business may originate or terminate in the state, or in some instances both there originate and terminate, or it may pass through the state with origin and destination both outside thereof. The St. Louis & Hannibal Railway is located wholly within the state, extending from Hannibal, Missouri, through a valuable and populous part of the state, to a point upon the Wabash Railway and is the only one of the complainants, the line of which does not cross the state line. The Kansas City, Clinton & Springfield Railway extends from Olathe, Kansas, (a small town about 20 miles
230 from Kansas City, Missouri,) for a distance of about eleven miles to the state line from whence it runs through the southwestern part of the state, but not as in the case with the other railways reaching with its own trains any of the basing points or great commercial or market centers of the state.

2. The same properties, trains and facilities are necessarily used by each company in conducting both the state and interstate business. It would not be practicable to operate in any other way. If separate cars or trains were required to be operated for the state and interstate business or separate facilities used for each, no one of the complainants could for the business of any or all classes in this state pay operating expenses, the public would be greatly inconvenienced, and enormous investments would be required in order to meet changed conditions. It is absolutely essential to the safety, convenience and economy of passengers and shippers for the business to be conducted as it is, without any attempted separation in conducting upon the same trains and with the same facilities both the state and interstate business.

3. Missouri is peculiarly located so far as concerns the question whether the fixing a state rate directly affects an Inter-state rate. The state is midway between the Great Lakes and the Gulf of Mexico, and midway between the Atlantic and Pacific Oceans. The vast quantities of traffic, and volumes of travel between the east and west and north and south necessarily cross the entire state. Two great rivers bound the state upon the east and west. Upon these rivers are located great markets and commercial centers. Those at Kansas City being the largest between the Mississippi River and the Rocky Mountains. All freight rates from the east to the west and vice versa are made up of a rate to and from these rivers plus the rate across the state. This has always been so and whatever the reason therefor, as a practical railway problem will always be so if intelligent, exper-

ienced and practical railway men are permitted to fix rates upon a fair, reasonable and intelligent, basis. The river points,
231 therefore, have become and are rate basing centers. Great cities and markets have been built up by reason of and upon the faith of this fact. At such points great railroad properties have been acquired and extensive terminals provided in view thereof. In many instances the railways there terminate. If a different method were adopted a chaotic condition would be created, business of these cities and markets would be seriously and unduly disturbed and embarrassed and investments there made largely affected. The actual result is that the short line mileage across the state actually controls and fixes the freight rate by every other railway, no matter what the distance or points of origin and destination may be. From Hannibal to St. Joseph, Missouri, is 198 miles by the Chicago, Burlington & Quincy Railway. This is the shortest rail distance between the rivers. From St. Louis to St. Joseph it is at least 300 miles, to Kansas City 280 and upward. Whenever a freight rate per mile is fixed for the 198 miles, the short route between the rivers, the total rate between all Mississippi and Missouri River points must conform thereto even though the distance be 300 or more miles. This situation applies to every competitive point between the rivers of which there are many of magnitude and importance. The traffic between St. Louis and Missouri river points, both state and interstate, is enormous. Every railway carrying freight must be at the expense of carrying it from 280 to 300 or more miles, yet receive therefor a rate based upon a distance of 198 miles. Unless it should do so it would not be able to handle enough freight between river points to justify the running of trains. Unless the rates were so fixed no substantial business would be done between the river points because every shipper to or from the east would be compelled to ship by the short line. St. Louis merchants could not compete for western business. In the passenger traffic the universal rule is that the short line between any two stations fixes and establishes the rate. In other words, the
232 rate being fixed per mile, the longer route will not be able to carry passengers between any two points if its total rate exceeds the short line rate. In actual railway operation, the state line is wholly arbitrary. Unless the mileage rate is the same, passengers will, if the state rate be lower than the interstate, buy tickets or pay fare to a state line station and there provide themselves anew with tickets, thus making an interstate journey partly state. Experience has demonstrated this to be noticeably true. In July and August, 1907, when a two cent fare was in force in Missouri upon state business and three cents upon interstate this practice became quite general. It became absolutely necessary as a practical railroad question to put in force the same rate for state and interstate travel; otherwise it would have become impossible to keep track of a large part of the interstate travel and a large unnecessary expense been incurred by the work imposed at the state line stations. For these and many other reasons shown by the evidence, including those mentioned in paragraph 4, it is a fact that no mileage state rate, for freight or passengers extending across the state of Missouri, can be established which

does not actually and immediately directly affect the interstate rate, not only in but out of the state. It therefore, must as a fact, be said that the rates fixed by the laws complained of in the bills, do directly and immediately affect and regulate intersate commerce.

4. Two of the great trunk lines in Missouri are the Missouri Pacific and the Chicago, Burlington & Quincy Railways. Both extend from St. Louis to St. Joseph—the Burlington lines between these points are wholly within the state; those of the Missouri Pacific pass out of Missouri at Kansas City, into Kansas, leaving that state at Atchison, coming again into Missouri. All traffic over the Missouri Pacific from St. Louis to St. Joseph is interstate. If the state rate, freight or passenger, be lawfully fixed the Burlington must conform
233 thereto on its St. Louis and St. Joseph business. When it so does this rate must be met by the Missouri Pacific or else the latter will get none of the business. This situation is applicable to all the Missouri Pacific business between St. Joseph and Kansas City and all points thereof. The Burlington and other roads as direct and as connecting carriers compete therefor. A very large and substantial part of the business of the Missouri Pacific is carried from St. Joseph to Kansas City and St. Joseph and points between and is thus affected. The same situation exists as to other companies. The Chicago Great Western Railway between St. Joseph and Kansas City runs from Missouri, thence into Kansas, and back into Missouri, making the business interstate. The lines of the Burlington and St. Joseph & Grand Island companies between these points are wholly within the state. The lines of the St. Louis & San Francisco and Kansas City Southern companies between Kansas City and Joplin and the great lead and zinc mining districts of Missouri, start from Kansas City, Missouri extend into Kansas and thence back into Missouri, thus making the journey interstate. The Missouri Pacific line between these points is wholly state. The Missouri, Kansas & Texas also runs from Missouri into Kansas and back into Missouri, competing with lines wholly in the state. In each of these instances a very large and substantial part of the business of each of said companies originates and terminates in Missouri yet by passing in its journey out of the state is interstate. In each instance if the competing line wholly in the state is by state law compelled to lower its rate, those doing such interstate business must likewise reduce their rates between the same state points or do none of the business. All the complainants have joint tariffs, with the others, doing one with the other, a through connecting business. The laws complained of in the bills do therefore directly affect and interfere with a substantial part of traffic of the state which is interstate commerce, originating and ending in the state, particularly much of that
234 kind upon the lines of the Missouri Pacific, Chicago Great Western, St. Louis & San Francisco and Missouri, Kansas & Texas companies. The laws complained of are general in their nature, making neither classification nor exception. So by reason of the peculiar location of many of the large roads in Missouri a unique situation is presented whereby, wholly independent of the facts set forth in paragraph 3, state rates certainly directly and imme-

diately affect interstate traffic both freight and passenger. So great an amount of interstate business is affected thereby that if it was permitted to be free from state regulation, and the other companies in the state refused to conform to the rates fixed by the laws by the bills herein questioned, they as competitors, whether original or connecting carriers, would lose so much state business that they would be compelled to carry at an actual loss that which remained of that class of traffic.

5. Much difficulty in the cases has been obviated by complainants making up and delivering to defendants, from time to time, statements showing the earnings and expenses for certain periods, which seem to have been treated by the parties as sufficiently illustrative of the situation to enable a fair determination of the controversy to be had. Complainants have extended to defendants every facility, given them the fullest opportunity, and granted them every possible courtesy, so that any experts for defendant have had every opportunity to call for any figures and to make up any statement upon any theory desired. Inasmuch as the same periods of time, in the various statements submitted, were adopted by both parties, the findings as to each company will follow along the same line, and actually mean that such period should be considered as representative, of the situation generally. Inasmuch as the freight act of 1907 covered the same commodities as the Acts of 1905 but allowed an increased earning, it follows as was conceded by defendants at the trial, if the freight act of 1907 was confiscatory, that of 1905 was likewise
235 confiscatory but to a greater degree. It must therefore be said that the rates fixed by the laws complained of in the bills do, in fact, directly and immediately affect interstate rates and directly regulate a large and substantial part of interstate commerce of the state and interstate carriage, freight and passenger, upon the Missouri Pacific, Chicago & Great Western, St. Louis & San Francisco, Kansas City Southern and Missouri, Kansas & Texas Railways and their connecting carriers.

6. The earnings in a state, from state and interstate business, can be ascertained with a reasonable degree of certainty from the waybills, tickets and cash fares. The books and papers of complainants are and always have been so made and kept that it is a mere matter of expense, though considerable, and detail work, though extensive, to make the ascertainments. The freight earnings consist of earnings from transportation and from miscellaneous services, such as switching, demurrage, storage and track rentals. Passenger earnings are those from passenger fares and miscellaneous services, such, for instance, as mail, express and excess baggage.

7. No serious difference has arisen in the separate cases as to the ascertainment of the expense of doing the entire passenger, freight or miscellaneous business in the state. So, with a reasonable degree of certainty, and with little controversy this division can be and has been made. Inasmuch as these expenses are incurred by the use of the same properties, car tracks and facilities, there is not and never has been any certain known fixed rule or method by which, to a mathematical certainty, these different expenses so separated can be

divided, as between state and interstate business The method to be adopted in making the division was the chief serious controversy at the trial. Complainants claim that the division should be upon the revenue basis, in which way there can in the first instance, be assigned to each class of business, freight, miscellaneous freight,
236 passenger and miscellaneous passenger, or to all or any of them combined, a reasonable and fair amount as state and inter-state expenses respectively, to which should be added such sum as would represent the extra cost of doing state over interstate business. The defendants claim that the division should be, for freight, upon the ton-mile basis, and for passenger, upon the passenger-mile basis, and that miscellaneous freight earnings and expenses should be included in freight and miscellaneous passenger earnings in those of passenger. As the revenue proportion is, in most instances, nearly twice as much as the ton-mile proportion, the reason for the difference is apparent. By the revenue basis is meant assigning as expense of state business, of any particular kind or kinds, such proportion of the total expense in the state on that class of business as the earnings from that class of state business bears to all the earnings (state and interstate) from the same class; or, as often put, ascertain what proportion all expenses are of all earnings, and then multiply the state earnings of any class thereby, thus finding a sum which would equal the expenses to be there assigned. By the ton-mile basis is meant the assignment to state freight expenses such proportion of all freight expense as the number of tons per mile of state freight bears to the total ton-miles of all freight hauled in the state. By the passenger-mile basis is meant the assignment as state passenger expenses such proportion of all passenger expenses as the number of passengers in state business carried one mile bears to the whole number of passengers (state and interstate) carried one mile

Another method of division of freight expense is upon the basis of the number of tons carried, regardless of distance. In results there is little difference, as a division on this basis is practically the same as that which is shown by the revenue basis. Neither party has adopted it as a basis of division.

237 8. There being no method by which the division of expenses, as between state and inter-state, can be made to a mathematical certainty, calculations have been made upon every reasonable basis, and a determination reached, in the light of all the evidence, of a reasonable sum, in money, which should be actually charged as the expense of doing each class of state business. To this should be added the extra cost of doing the state business. The sums hereinafter found were first actually ascertained by a division upon a revenue basis. Then, after considering all things, they were and are adopted as the proper sums to reasonably represent an actual fair apportionment of expenses as between state and interstate business. Any apportionment of freight expenses, upon a ton-mile basis would charge too small an amount as state expense. This would make necessary the use of a multiple of extra cost, large enough to make the sum total of state freight expense equal that hereinafter accurately found to reasonably represent the cost as it ought

from the evidence to be found. Any apportionment of passenger expense, upon the passenger mile or any other basis which would not make the state passenger expense equal in dollars the sum hereinafter found, would be unfair and unjust.

9. All things considered, the evidence duly weighed, there being no abnormal feature, the cost of doing the different classes of state business, ascertained as between state and interstate, upon a revenue basis, brings a result in dollars in Missouri which is fair, just, reasonable and representative. That method of ascertainment is much better and more satisfactory than any other which has, by any one, been suggested. If the law be that some one theory must be adopted, then the revenue basis would be and is hereby accepted as correct. However, in these cases, although the ascertainment is actually made upon the revenue basis, the figures when ascertained, have been considered in the light of all the facts and circumstances in evidence,
and then in and of themselves and independently of their
238 method of ascertainment, also adopted as fairly and justly representing the cost and expense of doing each class of state business.

10. There is an extra cost and expense of doing state over interstate business, both as to freight and passenger. This extra cost is as to each complainant, for freight, much in excess of fifty per cent. of all freight expense, and for passenger in excess of twenty-five per cent of all passenger expense. While the extra cost is much in excess of these figures, yet, for the purpose of this case, they may, as to each complainant, be adopted as the minimum. How much more the extra cost is, need not be now determined, because at the minimum figures thus fixed, the rates in question are, in view of the case, unreasonable and confiscatory. If the ton-mile method of apportionment of freight expenses were adopted, the multiple of extra cost of doing each class of state business would be fixed at such figures as would make the entire expense as increased, equal to that hereinafter found, because, the total amount as found, regardless of the method of finding same being that which fairly represents the minimum actual cost and expense of doing such state business.

11. After ascertaining the cost of doing the different classes of state business, and deducting same from the earnings there should be and there is deducted from the state freight earnings of each complainant such sum as would equal its diminution of earnings *of each complainant such sum as would equal its diminution of earnings* upon the commodities covered by the act, if the rates thereon fixed thereby had been charged. This has been done as to each complainant.

12. In the case of each complainant, other than the St. Louis & Hannibal Railway Company, and Kansas City, Clinton & Springfield Railway Company, the earnings should be sufficient, in any event, to fully meet its proportion of the interest upon the bonded indebtedness, there being nothing out of the ordinary as to such indebtedness, and nothing to indicate that the property was unduly
239 bonded. Such interest has been regularly paid for years and there is nothing to indicate any improper bonding. The pro-

portion of the property assignable to any of the state traffic, upon a revenue basis, is actually worth more than enough to justify such return. The proportions of the property of the St. Louis & Hannibal and the Kansas City, Clinton & Springfield respectively assignable to any of the state traffic, are worth enough to justify some substantial return. However, irrespective of this finding and eliminating any question of interest, the rates in question are as hereinafter shown insufficient to make a fair and reasonable return upon the value of the portion of the property of each complainant devoted to the use.

13. Each class of business of each complainant should have assigned to it its fair proportion of the value of the entire property in the state as that upon which it is entitled to a return. Such a division hereafter made, is upon a revenue basis. The result reached thereby is so fair, just and reasonable that they are, in view of all the facts, adopted, regardless of the method of ascertainment. There has been fixed a minimum valuation for the railway property in the state. The property is worth at least that much. There is and should be assigned to each class of state business such proportion of such valuation as the gross state revenue of that class, bears to the gross revenue in the state. When this is done there is ascertained a sum which, in any event, is, considering all of the evidence, and regardless of the method by which the result is reached, the very least value upon which a reasonable return should be had as to that class of business. These figures, as to values, are probably less than the actual values, but for the purposes of the cases are taken as figures representing a minimum valuation upon which at least a fair return should be had, if any, because the rates in question at such valuation are confiscatory. It is therefore unnecessary to consider how much more the property is worth.

240 14. There are, therefore, in the cases tried, findings made and hereinafter set forth, showing: (*a*) All earnings, state and interstate, freight, miscellaneous freight, passenger and miscellaneous passenger; the proportions which state and interstate freight and passenger earnings (exclusive of miscellaneous) bear to all combined state and interstate freight and all passenger earnings (including miscellaneous) respectively, and that which they bear to all earnings in the state. (*b*) Miscellaneous freight and miscellaneous passenger earnings, (undivided as between state and interstate) with the proportions they are of all earnings and of, respectively all freight and passenger. (*c*) All expenses, divided in proportion to revenue, as between all kinds of freight and passenger business, including miscellaneous, but undivided as between state and interstate. (*d*) A deduction from all state freight (exclusive of miscellaneous), of such proportion of the expenses of all freight and all passenger respectively as the freight and passenger earnings respectively, exclusive of miscellaneous, bore to all freight and passenger earnings. (*e*) A like deduction of extra cost of doing such business respectively, including miscellaneous. (*f*) A deduction from freight earnings of sums equalling the diminution which would have been caused if the rates fixed by the act had been charged. (*g*) The value of that portion of complainants' property assignable to the particular traffic. This

is ascertained by taking, for each class of business, of the entire value in the state such proportion as the earnings upon that portion of the business bear to all the earnings in the state.

The results thus reached and the sums finally ascertained irrespective of the methods by which the apportionments are made, in the light of all the facts and circumstances in evidence, are fair, just and reasonable, and such as ought, in each instance, to be fixed. Anything in the way of a return less than six per cent interest upon the part of the property assignable to any traffic in question is unreasonable and confiscatory.

241 15. The complainants made out and served their statements upon defendants, not dividing the miscellaneous as between state and interstate, for the reasons therein thus set forth:

"Inasmuch as differences might arise between complainant and the state as to the method of apportioning miscellaneous freight and mail, express and miscellaneous passenger earnings, and as no question as to such earnings is here involved, same have, to avoid confusion and unnecessary controversy, been left undivided as between state and interstate earnings."

No request was ever made for such a division, though it could have been made by complainants had a request been made therefor by defendants. The actual division could have been made by defendants had they so desired. If an accurate division were necessary it would even now be called for, regardless of the time necessary to be devoted to the work, though neither party is entitled to have the case delayed to obtain the information. To do so would make necessary a possible change in some percentages, though not enough to change the result. As neither party thought an actual division was necessary, a court could well assume as the proofs clearly show, that if made, the final result of the case would not be changed thereby. As a matter of fact it would be fairer and better to deal alone with the effect of the laws in question upon strictly freight and passenger business. At the trial, however, the state's experts made an estimated division of these miscellaneous earnings, both freight and passenger, as between state and interstate, by arbitrarily assigning the same in the proportion of the revenue received from purely freight and purely passenger earnings respectively. This was an arbitrary basis, unwarranted in fact and made in a method which assigned entirely too great a proportion to the state business and improperly and unnecessarily enlarged the state earnings. It is, therefore, rejected. From the figures hereinafter set forth, it will be seen that the miscellaneous earnings are but a small proportion of all earnings, especially

242 of the freight. To avoid confusion in making new tabulations, the arbitrary division made by the state's experts may be assumed to be correct, still this would make no difference in the result of the cases. This because there should be charged against these earnings a sum equalling the revenue proportion of all the expense of freight and passenger respectively, plus an extra cost of doing state business. The sums ascertained in this way would be the fair, just and equitable charge as the minimum expense of doing such business. When so made there should be assigned as the valua-

tion upon which there should be a return, such proportion of the entire value as the respective earnings from miscellaneous freight and passenger, bear to all earnings. When this is done it is apparent that no fair return is received upon this class of business. Hence, if the miscellaneous earnings were added to the freight and passenger earnings respectively, so as to consider all freight as a whole, and also all passenger as a whole, the result reached will not and could not be changed. Had a desire been, in proper time, expressed for an accurate division of miscellaneous earnings as between state and interstate, according to the facts, it would have been ascertained, so that the loss would have been shown, considering freight and passenger earnings alone, and also such loss considering the miscellaneous with each. However, the miscellaneous passenger business consists in the main of mail and express, and it is difficult to see why, in ascertaining the losses or gains under a two cent fare law there should be included either losses or gains from the miscellaneous earnings, especially when the main portion of the earnings are more in the nature of freight earnings from a passenger service.

16. The expense of doing all the state business, when ascertained on the revenue basis, estimating the extra cost of doing the state freight business at the minimum of at least 50 per cent, and the passenger business at the minimum of at least 25 per cent, shows
243 a sum which would be fair and reasonable to adopt as the cost of doing the entire state business. So that, if all the state business be considered as a whole and be done at the rates now in existence and those fixed by the laws questioned in the bills, there is no doubt that there is no reasonable or compensatory return upon the value of the portion of the property assignable to the whole of the state traffic. It is not here necessary to determine whether, as many competent railroad managers say, that no state rates are compensatory. It is true that such will be the result in Missouri, if the laws in question are enforced. There is a reason why, there, it is true. That state is peculiar in its central location, its class of business, and the location of its cities. The short line between the rivers, as a transportation problem, necessarily fixes the rate for the enormous freight traffic passing to and from the east and the west. There are located at the two rivers two of the great markets of the United States. Freight rates are, by state laws and state commissions, fixed to a large extent upon a mileage basis. The result is that the vast traffic between Kansas City and St. Louis is done at the expense of a carriage of 280 miles and upwards, whereas, the compensation of the carrier is fixed upon the theory of a carriage of 198 miles. So with the passenger business. There are many large centers upon each side of the state, particularly the great cities, St. Louis, Kansas City and St. Joseph. There are many large competitive cities in the interior. There are great and marked differences in the respective distances between competitive points on the many different lines in the state. As passenger rates are fixed by law upon the mileage basis the necessary result is that every company has numerous instances in which it is put to the expense of a carriage of a long distance but is paid at a rate for a much shorter distance. Taking

these facts into consideration, together with the extra cost of doing state business, it is a fact, whether all state business be treated
244 as a whole or subdivided into classes, the rates now in existence and those fixed by the laws in question, fail to bring any fair or substantial return; nothing like one-half of the rate of interest which is fixed by law.

17. The adoption of the two cent fare did not cause any substantial increase in travel. At first a great many persons rode as state passengers to and from the state line, so that the state obtained more revenue than that to which it was entitled. Any statement of the passenger business which includes July and August, 1907, is unduly fair to the state. However, state and interstate fares soon became the same, and the longer the period over which the figures are extended the greater will be the loss shown.

18. If the companies had, after the two-cent passenger rate went into effect, been permitted to charge the amount which they, prior thereto, actually received per passenger per mile, they would have received this much more money:

Name of road.	Period covered months.	From state passengers.	From inter-state passengers.
St. L. & S. F. R. R. Co.....	12	666,008.72	509,738.63
A. T. & S. F. Ry. Co.....	12	30,885.52	66,271.03
C. R. I. & P. Ry. Co. and St. L. K. C. & C. Ry. Co.....	12	124,469.14	111,178.60
K. C. So. Ry. Co.....	12	7,044.49	27,260.75
St. L. & H. Ry. Co.....	12	37,275.38	145.23
M. K. & T. Ry. Co.....	12	140,593.46	63,815.12
K. C. C. & S. Ry. Co.....	12	14,654.57	10,846.91
C. B. & Q. R. R. Co.....	12	394,878.77	251,556.41
C. G. W. Ry. Co.....	12	65,945.96	46,162.17

19. In the case of the St. Louis & San Francisco Railway there were included in the expenses sums paid as rentals under a lease of the Kansas City, Fort Scott & Memphis Railway. The common stock of the latter company is owned by the St. Louis & San
245 Francisco which operates the property under a lease, requiring it to pay to the holders of preferred stock of the Memphis as a rental a sum equal to a four-per-cent annual dividend thereon. There is nothing to impeach the fairness of the lease or its terms. It has been in existence for years. This rental has always been treated as an operating expense and not included in the fixed charges, nor included in the stock issue or bonded indebtedness or interest charge. It is therefore treated as it should be and in fact is, part of the expenses. The total amount charged in the accounts hereinafter set forth as part of the state freight expense is $8,428.56 and as part of the state passenger expense $7,443.68. If these items should be eliminated from the expenses, there would be no difference in the result.

20. The minimum values of the railway properties in the state belonging to and used by the complainants in Missouri are:

	Miles.	Value.	Value per mile.
St. Louis and San Francisco (1907)	1,688.89	61,238,414.70	36,259.00
Atchison, Topeka & Santa Fe (1907)	348.31	15,091,212.00	43,326.00
Chicago, Rock Island & Pacific (1907)	515.48	19,102,507.59	37,058.00
Kansas City Southern (1908)	174.48	8,039,084.40	46,075.00
St. Louis & Hannibal (1907)	120.61	1,143,007.02	9,477.00
Missouri, Kansas & Texas (1908)	506.21	20,894,229.93	41,276.00
Chicago, Burlington & Quincy (1908)	1,136.34	53,172,907.83	46,793.00
Kansas City, Clinton & Springfield (1907)	151.01	2,380,222.48	15,762.00
Chicago Great Western (1907)	84.43	3,605,236.38	42,701.00

The sums thus found as the minimum values in all cases except those of the Kansas City, Clinton & Springfield and St. Louis & Hannibal, are in fact the same as estimated by the assessing officers of Missouri. In the cases of those two companies it is one third less.

Nevertheless the valuations thus found are, aside from and in-
246 dependently of the fact that they were estimates of the state found in view of all the facts and circumstances in evidence to be the minimum fair and reasonable values of the properties.

21. There are now made and submitted, tables showing the earnings and expenses and assignable fixed charges and value of the complainants' property in the cases tried. From the expenses, even taxes and rentals are excluded, though probably they should not be. The periods over which the findings extend were, at the trial, adopted by the parties as fairly representative. They are in fact sufficiently fairly representative of the actual earnings and expenses, under ordinary and usual conditions, to be used as tests to determine whether the rates permit of a reasonable return upon the investment. They were supported by statements covering other years and longer periods. These tables treat state freight as distinct from miscellaneous freight, and state passenger as distinct from miscellaneous passenger, but do not charge against either freight or passenger earnings any expense of doing miscellaneous business, nor do they include in the assignable proportion of value or interest any part of that assignable to the miscellaneous business. Nor do these tables include the St. Louis Southwestern, Missouri Pacific, St. Louis, Iron Mountain & Southern, Quincy, Omaha & Kansas City, Wabash, St. Joseph & Grand Island, Chicago, Milwaukee & St. Paul, or Chicago & Alton Railways. This because the cases of these companies, by stipulations, are to abide the result in other cases as to which findings are made. These tabulations contain the figures agreed upon by the experts for both sides if the court should adopt the results reached by a revenue basis.

247 (A) ST. LOUIS AND SAN FRANCISCO R. R. COMPANY.

(1) Period Covered.

The representative period taken by the experts upon both sides as to this company *are* for three months ending September 30th, 1907, and in that period the earnings and expenses were as set forth in subdivisions (1) and (2).

(2) Earnings and Percentages.

Character.	Amount.	Per cent of all freight earnings.	Per cent of all earnings.
Interstate freight	$2,214,002.82	76.94	54.68
State freight	577,192.84	20.04	14.26
Miscellaneous freight	86,814.57	3.02	2.14
Total	2,878,010.23	100.	71.08
		Per cent of all passenger earnings.	
Interstate passenger	368,687.43	31.49	9.11
State passenger	599,051.59	51.17	14.79
Miscellaneous passenger	203,077.28	17.34	5.02
Total	1,170,816.30	100.	28.92
Grand Total	4,048,826.53	.....	100.

(3) Expenses, Less Taxes & Rentals, Undivided Between State and Interstate.

All freight expense, including miscellaneous	$1,802,813.26
All passenger expense including miscellaneous	974,816.61

	Freight.	Passenger.
Percentage of expenses to earnings	62.64%	83.26%

248 (4) Taxes and Rentals.

Freight	$112,452.04
Passenger	38,979.63
Total	151,431.67

(5) State Earnings and Expenses.

	Freight.	Passenger.
State earnings above shown are	577,192.84	599,051.59
Expense of state business	361,644.33	498,716.20
Leaving	215,548.51	100,335.39
Less Taxes & Rentals (Par. 4)	22,760.29	20,097.90
Leaving	192,788.22	80,237.49
Deduct extra cost of state business freight estimated at 50%, passenger 25%	131,425.08	53,907.36
Leaving	61,363.14	26,330.13
Deduct diminution in earnings if the state freight rates in question had been charged	11,389.27	.....
Leaving as surplus	49,973.87	26,330.13

(6) Valuation.

Valuation of property in state is $61,238,414.70 of which 14.26% is assignable to state freight and 14.79% to state passenger business	2,183,149.48	2,264,290.38
Six per cent upon this part for the period covered is	130,988.97	135,857.42

(7) Return on Value.

In the way of a return upon the assignable value found in subdivision 6, the surplus shown in subdivision 5, is	2.29%	1.16%

(8) Interest Charge.

The actual interest charge paid, divided in the assignable proportions shown in subdivision 6 is	$116,792.45	$121,133.27

249 (B) Atchison, Topeka & Santa Fe R. R. Company.

(1) Period Covered.

The representative period taken by the experts upon both sides as to this company *are* for six months ending Dec. 31, 1907, and in that period the earnings and expenses were as set forth in subdivisions (1) and (2).

(2) Earnings and Percentages.

Character.	Amount.	Per cent of all freight earnings.	Per cent of all earnings.
Interstate freight	$1,872,915.00	90.05	67.72
State freight	141,133.00	6.79	5.10
Miscellaneous freight	65,833.56	3.16	2.38
Total	2,079,881.56	100.	75.20
		Per cent of all passenger earnings.	
Interstate passenger	355,318.12	51.81	12.85
State passenger	104,370.19	15.22	3.77
Miscellaneous passenger	226,080.00	32.97	8.18
Total	685,768.31	100.	24.80
Grand Total	2,765,649.87	.....	100.

(3) Expenses, Less Taxes & Rentals, Undivided Between State and Interstate.

All freight expense including miscellaneous	1,382,738.65
All passenger expense, including miscellaneous	572,167.20

	Freight.	Passenger.
Percentage of expenses to earnings	66.48%	83.43%

250 (4) Taxes & Rentals.

Freight	32,361.50
Passenger	10,854.04
Total	43,215.54

(5) State Earnings and Expenses.

	Freight.	Passenger.
State earnings above (par. 2) shown are	141,133.00	104,370.19
Expense of state business	92,581.89	87,834.09
Leaving	48,551.11	16,536.10
Less Taxes & Rental	3,503.41	901.74
Leaving	45,047.70	15,634.36
Deduct extra cost of state business freight estimated at 50%, passenger 25%	41,859.55	17,947.71
Leaving	3,188.15	Def. 2,313.35
Deduct diminution in earnings if the state freight rates in question had been charged	13,885.87	.....
	Def. 10,697.72	Def. 2,313.35

(6) Valuation.

Valuation of property in state is $15,091,-212.00, of which 5.10% is assignable to state freight, and 3.77% to state passenger business	384,825.91	284,469.35
Six per cent upon this part for the period covered is	23,089.35	17,068.16

(7) Return on Value.

In the way of a return upon the assignable value found in subdivision 6, the deficit shown in subdivision 5 is	Nothing %	Nothing %

(8) Interest Charge.

The actual interest charge paid, divided in the assignable proportions shown in subdivision 6 is	17,934.56	13,257.51

251 (C) Chicago, Rock Island & Pacific Ry. Company.

(1) Period Covered.

The representative period taken by the experts upon both sides as to this company *are* for three months ending September 30, 1907, and in that period the earnings and expenses were as set forth in subdivisions (1) and (2).

(2) Earnings and Percentages.

Character.	Amount.	Per cent of all freight earnings.	Per cent of all earnings.
Interstate freight	$665,228.16	79.38	59.86
State freight	150,953.68	18.02	13.58
Miscellaneous freight	21,815.70	2.60	1.96
Total	$837,997.54	100.	75.40
		Per cent of all passenger earnings.	
Interstate passenger	$113,524.21	41.53	10.22
State passenger	114,853.04	42.02	10.33
Miscellaneous passenger	44,980.08	16.45	4.05
Total	$273,357.33	100.	24.60
Grand Total	1,111,354.87	.....	100.00

(3) Expenses, Less Taxes and Rentals, Undivided Between State and Interstate.

All freight expense, including miscellaneous	$619,199.73
All passenger expense, including miscellaneous	317,633.62

	Freight.	Passenger.
Percentages of expenses to earnings	73.89%	116.20%

252 (4) Taxes and Rentals.

Freight	$74,227.43
Passenger	21,015.44
Total	$95,242.87

(5) State Earnings and Expenses.

	Freight.	Passenger.
State earnings above (par. 2) shown are	$150,953.68	$114,853.04
Expense of state business	111,579.80	133,469.65
Leaving	$39,373.88	Def. 18,616.61
Less taxes and rentals	13,375.78	8,830.68
Leaving	$25,998.10	Def. 27,447.29
Deduct extra cost of state business freight estimated at 50%, passenger 25%	$41,919.82	17,501.61
Leaving	Def.$15,921.72	Def. 44,948.90
Deduct diminution in earnings if the state freight rates in question had been charged	$9,989.43	.....
Leaving	Def.$25,911.15	Def. 44,948.90

(6) Valuation.

Valuation of property in state is $19,102,507.59, of which 13.58% is assignable to state freight and 10.33% to state passenger business	$648,530.15	$493,322.26
Six per cent upon this part for the period covered is	$38,911.81	$29,599.34

(7) Return on Value.

In the way of a return upon the assignable value found in subdivision 6, the deficit shown in subdivision 5 is	Nothing %	Nothing %

(8) Interest Charge.

The actual interest charge paid, divided in the assignable proportions shown in subdivision 6, is	$24,907.02	$18,946.21

253 (D) KANSAS CITY SOUTHERN RAILWAY COMPANY.

(1) Period Covered.

The representative period taken by the experts upon both sides as to this Company *are* for six months ending June 30, 1908, and in that period the earnings and expenses were as set forth in subdivisions (1) and (2).

(2) Earnings and Percentages.

Character.	Amount.	Per cent of all freight earnings.	Per cent of all earnings.
Interstate freight	$702,249.91	79.35	67.11
State freight	38,748.76	4.38	3.70
Miscellaneous freight	144,046.62	16.27	13.77
Total	$885,045.29	100.	84.58
		Per cent of all passenger earnings.	
Interstate passenger	$89,504.58	55.47	8.55
State passenger	31,865.28	19.75	3.05
Miscellaneous passenger	39,973.54	24.78	3.82
Total	$161,343.40	100.	15.42
Grand Total	$1,046,388.69	.....	100.00

(3) Expenses, Less Taxes and Rentals, Undivided Between State and Interstate.

All freight expense, including miscellaneous	$571,297.54
All passenger expense, including miscellaneous	141,432.56

	Freight.	Passenger.
Percentages of expenses to earnings	64.55%	87.66%

254 (4) Taxes and Rentals.

Freight	$22,331.70
Passenger	3,737.37
Total	$26,069.07

(5) State Earnings and Expenses.

	Freight.	Passenger.
State earnings above (par. 2) shown are	$38,748.76	$31,865.28
Expense of state business	25,022.83	27,932.93
Leaving	$13,725.93	3,932.35
Less taxes and rentals	978.13	738.13
Leaving	$12,747.80	3,194.22
Deduct extra cost of state business freight estimated at 50%, passenger 25%	11,711.60	5,346.15
Leaving	$1,036.20	Def. 2,151.93
Deduct diminution in earnings if the state freight rates in question had been charged	2,957.58	.....
Leaving	Def. $1,921.38	Def. $2,151.93

(6) Valuation.

Valuation of property in state is $8,039,084.40, of which 3.70% is assignable to state freight, and 3.05% to state passenger business	$148,723.06	$122,596.04
Six per cent upon this part for the period covered is	$8,923.38	7,355.76

(7) Return on Value.

In the way of a return upon the assignable value found in subdivision 6, the deficit shown in subdivision 5 is	Nothing %	Nothing %

(8) Interest Charge.

The actual interest charge paid, divided in the assignable proportions shown in subdivision 6, is	$5,295.38	$4,365.11

255 (E) ST. LOUIS & HANNIBAL RAILWAY COMPANY.

(1) Period Covered.

The representative period taken by the experts upon both sides as to this company *are* for the year ending June 30, 1908, and in that period the earnings and expenses were as set forth in subdivisions (1) and (2).

(2) Earnings and Percentages.

Character.	Amount.	Per cent of all freight earnings.	Per cent of all earnings.
Interstate freight.....	$51,735.05	36.25	24.61
State freight.....	87,941.99	61.62	41.84
Miscellaneous freight.....	3,044.11	2.13	1.45
Total.....	$142,721.15	100.	67.90
		Per cent of all passenger earnings.	
Interstate passenger.....	$198.19	0.29	0.09
State passenger.....	52,667.38	78.04	25.05
Miscellaneous passenger....	14,619.99	21.67	6.96
Total.....	$67,485.56	100.	32.10
Grand Total.....	210,206.71	.....	100.

(3) Expenses, Less Taxes and Rentals, Undivided Between State and Interstate.

All freight expense, including miscellaneous.....	$117,908.81
All passenger expense, including miscellaneous.....	68,343.04

	Freight.	Passenger.
Percentages of expenses to earnings.....	82.61%	101.27%

(4) Taxes and Rentals.

	Freight	$5,994.07
256	Passenger	2,273.61
	Total	$8,267.68

(5) State Earnings and Expenses.

	Freight.	Passenger.
State earnings above (par. 2) shown are.....	$87,941.99	$52,667.38
Expense of state business.....	72,655.40	53,334.91
Leaving.....	$15,286.59	Def. 667.53
Less taxes and rentals.....	3,693.55	1,774.32
Leaving.....	$11,593.04	Def. 2,441.85
Deduct extra cost of state business freight estimated at 50%, passenger 25%.....	12,026.69	2,444.68
Leaving.....	Def. $433.65	Def. 4,886.53
Deduct diminution in earnings if the state freight rates in question had been charged.....	15,126.02	.....
Leaving.....	Def. $15,559.67	Def. 4,886.53

(6) Valuation.

Valuation of property in state is $1,143,007.02, of which 41.84% is assignable to state freight, and 25.05% to state passenger business.....	$478,234.14	$286,323.26
Six per cent upon this part for the period covered is.....	28,694.05	17,179.40

(7) Return on Value.

In the way of a return upon the assignable value found in subdivision 6, the deficit shown in subdivision 5 is.....	Nothing %	Nothing %

(8) Interest Charge.

The actual interest charge paid, divided in the assignable proportions shown in subdivision 6, is.....	$16,359.44	$9,794.55

257 (F) MISSOURI, KANSAS AND TEXAS RAILWAY COMPANY.

(1) Period Covered.

The representative period taken by the experts upon both sides as to this company *are* for July, August, October, November and December, 1907, and January, 1908, and in that period the earnings and expenses were as set forth in subdivisions (1) and (2).

(2) Earnings and Percentages.

Character.	Amount.	Per cent of all freight earnings.	Per cent of all earnings.
Interstate freight.....	$1,333,455.26	81.73	57.89
State freight.....	277,416.52	17.01	12.04
Miscellaneous freight.....	20,603.37	1.26	0.89
Total.....	$1,631,475.15	100.	70.82
		Per cent of all passenger earnings.	
Interstate passenger.....	$303,214.54	45.12	13.16
State passenger.....	246,368.53	36.66	10.70
Miscellaneous passenger..	122,458.22	18.22	5.32
Total.....	$672,041.29	100.	29.18
Grand Total.....	2,303,516.44	.....	100.00

(3) Expenses, Less Taxes and Rentals, Undivided Between State and Interstate.

All freight expense, including miscellaneous	$1,010,643.65
All passenger expense, including miscellaneous	516,589.98

	Freight.	Passenger.
Percentages of expense to earnings	61.95%	76.87%

258 (4) Taxes and Rentals.

Freight	$119,017.87
Passenger	58,465.49
Total	$177,483.36

(5) State Earnings and Expenses.

	Freight.	Passenger.
State earnings above (par. 2) shown are	$277,416.52	$246,368.53
Expenses of state business	$171,910.48	$189,381.89
Leaving	$105,506.04	$56,986.64
Less taxes and rentals	$20,244.94	$21,433.45
Leaving	$85,261.10	$35,553.19
Deduct extra cost of state business freight estimated at 50%, passenger 25%	$66,590.77	$27,482.59
Leaving	$18,670.33	$8,070.60
Deduct diminution in earnings if the state freight rates in question had been charged	$20,222.85	.....
Leaving as surplus	Def. $1,552.52	$8,070.60

(6) Valuation.

Valuation of property in state is $20,894,229.93, of which 12.04% is assignable to state freight and 10.70% to state passenger business	$1,257,832.64	1,117,841.30
Six per cent upon this part for the period covered is	$75,469.96	67,070.48

(7) Return on Value.

In the way of a return upon the assignable value found in subdivision 6, the surplus shown in subdivision 5 is	Nothing %	0.72%

(8) Interest Charge.

The actual interest charge paid, divided in the assignable proportions shown in subdivision 6, is	$62,439.68	$55,490.41

259 (G) CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY.

(1) Period Covered.

The representative period taken by the experts upon both sides as to this company *are* for the year ending June 30, 1908, and in that period the earnings and expenses were as set forth in subdivisions (1) and (2).

(2) Earnings and Percentages.

Character.	Amount.	Per cent of all freight earnings.	Per cent of all earnings.
Interstate freight	$6,454,699.87	78.75	52.40
State freight	$1,580,529.64	19.28	12.83
Miscellaneous freight	$161,579.41	1.97	1.31
Total	$8,196,608.92	100.	66.54
		Per cent of all passenger earnings.	
Interstate passenger	$1,77–,788.27	43.15	14.43
State passenger	$1,611,702.92	39.11	13.09
Miscellaneous passenger	$731,021.89	17.74	5.94
Total	$4,120,513.08	100.	33.46
Grand Total	$12,317,122.00	.....	100.

(3) Expenses (Less Taxes and Rentals), Undivided Between State and Interstate.

All freight expense, including miscellaneous	$6,793,610.60
All passenger expense, including miscellaneous	3,527,311.81

	Freight.	Passenger.
Percentages of expenses to earnings	82.88	85.60

260 (4) Taxes and Rentals.

Freight	Cr.	$12,235.30
Passenger	Cr.	6,152.58
Total	Cr.	$18,387.88

(5) State Earnings and Expenses.

	Freight.	Passenger.
State earnings above (par. 2) shown are	$1,580,529.64	$1,611,702.92
Expense of state business	1,324,453.83	1,489,746.71
Leaving	$256,075.81	$121,956.21
Less taxes and rentals	Cr. 2,487.99	2,798.50
Leaving	$258,563.80	$124,754.71
Deduct extra cost of state business freight estimated at 50%, passenger 25%	484,129.29	158,205.70
Leaving	Def. $225,565.49	Def. $33,450.99
Deduct diminution in earnings if the state freight rates in question had been charged	112,533.71	.....
Leaving	Def. $338,099.20	Def. $33,450.99

(6) Valuation.

Valuation of property in state is $53,172,907.83, of which 12.83% is assignable to state freight, and 13.09% to state passenger business	$6,822,084.07	$6,960,333.63
Six per cent upon this part for the period covered is	409,325.04	417,620.02

(7) Return on Value.

In the way of a return upon the assignable value found in subdivision 6, the deficit shown in subdivision 5 is	Nothing %	Nothing %

261 (H) KANSAS CITY, CLINTON & SPRINGFIELD RY. COMPANY.

(1) Period Covered.

The representative period taken by the experts upon both sides as to this company *are* for the year ending June 30th, 1908, and in that period the earnings and expenses were as set forth in subdivisions (1) and (2).

(2) Earnings and Percentages.

Character.	Amount.	Per cent of all freight earnings.	Per cent of all earnings.
Interstate freight	$116,893.60	68.27	41.04
State freight	45,003.15	26.29	15.80
Miscellaneous freight	9,319.58	5.44	3.27
Total	$171,216.33	100.	60.11

		Per cent of all passenger earnings.	
Interstate passenger	$41,145.00	36.22	14.45
State passenger	47,646.80	41.95	16.73
Miscellaneous passenger	24,797.39	21.83	8.71
Total.....	$113,589.19	100.	39.89
Grand Total.....	$284,805.52	.....	100.

(3) Expenses (Less Taxes & Rental) Undivided Between State and Interstate.

All freight expense, including miscellaneous.....		$98,988.29
All passenger expense, including miscellaneous.....		$138,384.77
	Freight.	Passenger.
Percentages of expenses to earnings.....	57.81%	121.83

262 (4) Taxes and Rentals.

Freight	$9,182.36
Passenger	5,749.38
Total.....	$14,931.74

(5) State Earnings and Expenses.

	Freight.	Passenger.
State earnings above (par. 2) shown are	$45,003.15	$47,646.80
Expense of state business.....	26,024.02	58,052.41
Leaving.....	$18,979.13	Def. $10,405.61
Less taxes and rentals.....	2,414.04	2,411.86
Leaving.....	$16,565.09	Def. $12,817.47
Deduct extra cost of state business freight estimated at 50%, passenger 25%	8,483.30	4,760.44
Leaving.....	$8,081.79	Def. $17,577.91
Deduct diminution in earnings if the state freight rates in question had been charged	2,970.21	.....
Leaving.....	$5,111.58	Def. $17,577.91

(6) Valuation.

Valuation of property in state is $2,380,222.48, of which 15.80% is assignable to state freight, and 16.73% to state passenger business	$376,075.15	$398,211.22
Six per cent upon this part for the period covered is	$22,564.51	$23,892.67

(7) Return of Value.

In the way of a return upon the assignable value found in subdivision 6, the surplus shown in subdivision 5 is.....	1.36%	Nothing %

(8) Interest Charge.

The actual interest charge paid, divided in the assignable proportions shown in subdivision 5, is.....	$23,581.78	$25,287.48

263 (I) CHICAGO GREAT WESTERN RAILWAY COMPANY.

(1) Period Covered.

The representative period taken by the experts upon both sides as to this company *are* for six months, ending Dec. 31, 1907, and in that period the earnings and expenses were as set forth in subdivisions (1) and (2).

(2) Earnings and Percentages.

Character.	Amount.	Per cent of all freight earnings.	Per cent of all earnings.
Interstate freight	$224,169.58	86.02	57.39
State freight	29,129.36	11.18	7.45
Miscellaneous freight	7,280.24	2.80	1.86
Total.....	$260,579.18	100.	66.70
		Per cent of all passenger earnings.	
Interstate passenger	$72,360.87	55.62	18.53
State passenger	38,105.03	29.28	9.75
Miscellaneous passenger	19,643.99	15.10	5.02
Total.....	$130,109.89	100.	33.30
Grand Total.....	$390,689.07	.....	100.

(3) Expenses (Less Taxes and Rentals) Undivided Between State and Interstate.

All freight expense, including miscellaneous.....	$198,887.69
All passenger expense, including miscellaneous.....	126,355.88

	Freight.	Passenger.
Percentages of expenses to earnings.....	76.33%	97.11%

264 (4) Taxes and Rentals.

Freight	$12,294.18
Passenger	11,312.16
Total	$23,606.34

(5) State Earnings and Expenses.

	Freight.	Passenger.
State earnings above (par. 2) shown are	$29,129.36	$38,105.03
Expenses of state business	22,235.64	36,996.98
Leaving	$6,893.72	$1,108.05
Less taxes and rentals	1,374.49	3,312.25
Leaving	$5,519.23	Def. $2,204.20
Deduct extra cost of state business freight estimated at 50%, passenger 25%	$9,347.72	6,090.35
Leaving	Def. $3,828.49	Def. $8,294.55
Deduct diminution in earnings if the state freight rates in question had been charged	1,893.41	.....
Leaving	Def. $5,721.90	Def. $8,294.55

(6) Valuation.

Valuation of property in state is $3,605,236.38, of which 7.45% is assignable to state freight, and 9.75% to state passenger business	$134,295.06	$175,755.27
Six per cent upon this part for the period covered is	$8,057.70	$10,545.32

(7) Return of Value.

In the way of a return upon the assignable value found in subdivision 6, the surplus shown in subdivision 5 is	.....%	.....%

(8) Interest Charge.

The actual interest charge paid, divided in the assignable proportions shown in subdivision 6, is	$7,164.08	$9,375.81

265 22. If it should be assumed that the state experts correctly divided miscellaneous earnings as between state and interstate, which they did not do, still the fair and reasonable sum to be charged against the state part of these miscellaneous freight and passenger earnings is the revenue proportion of the entire freight and passenger expense plus a minimum extra cost for miscellaneous freight and for miscellaneous passenger. When this is done it clearly appears that even without an allowance for extra cost, the result could not be changed if the findings already made as to state freight and passenger had included the miscellaneous, or had the miscellaneous of each class been separately considered. In no case would there be any fair return. If miscellaneous were considered separately, or if considered with freight and passenger respectively, the result would not be effected. This clearly appears from a tabulation now made as to each company with the exception of the St. Louis and Hannibal Ry. Company and the Kansas City, Clinton and Springfield Ry. Co., which are omitted for the reason that the State compiled and submitted no figures for these roads, showing: (*a*) The state experts' division of miscellaneous, though in fact it is too favorable to the state. (*b*) A deduction from earnings of the percentage proportion of expenses to earnings as done in Smyth v. Ames, 169 U. S. 466, which is the same as the revenue basis. (*c*) The minimum extra cost now found of doing the state over interstate being a mere fraction less than, and practically the same as, found as to the strictly freight and passenger. (*d*) The proportion that state's part of the miscellaneous was of all earnings, and the amount of return to which the company was entitled at six per cent interest upon that proportion of the value of the entire property as hereinbefore and now found to be fair, reasonable and just.

266 (1) St. Louis and San Francisco Railroad Company.

	Freight.			Passenger.		
	Amount.	% of all freight.	% of all earnings.	Amount.	% of all pass.	% of all earnings.
Miscellaneous state earnings	$17,953.25	00.62	00.44	$125,704.84	10.74	3.10
Less revenue proportion of expense 00.62% freight and 10.74% passenger	$11,177.44			$104,695.30		
Leaving	$6,775.81			$21,009.54		
Less increased cost freight 50%, passenger 25%	$5,588.72			$22,713.23		
Leaving	$1,187.09			Def. $1,703.69		
Less Taxes and Rentals	$697.20			$4,186.41		
	$489.89			Def. $5,890.10		
Amount due at 6% interest on portion of value assignable to the state part of the traffic	$4,041.74			$28,475.86		
Total Deficit..	$3,551.85			$34,365.96		

267 (2) Atchison, Topeka and Santa Fe Railway Company.

	Freight.			Passenger.		
	Amount.	% of all freight.	% of all earnings.	Amount.	% of all pass.	% of all earnings.
Miscellaneous state earnings	$4,608.35	00.22	00.17	$51,320.16	7.48	1.86
Less revenue proportion of expense 00.22% of freight and 7.48% passenger.	$3,042.02			$42,798.11		
Leaving	$1,566.33			$8,522.05		
Less increased cost freight 50%, passenger 25%.....	$1,521.01			$9,726.84		
Leaving	45.32			Def. 1,204.79		
Less Taxes and rentals	71.20			811.88		
Def..	25.88			Def. 2,016.67		
Amount due at 6% interest on portion of value assignable to the state part of the traffic	$769.65			$8,420.90		
Total deficit...	$795.53			$10,437.57		

268 (3) Chicago, Rock Island and Pacific Railway Company.

	Freight.			Passenger.		
	Amount.	% of all freight.	% of all earnings.	Amount.	% of all pass.	% of all earnings.
Miscellaneous state earnings	$4,035.91	00.48	00.36	$22,620.48	8.28	2.04
Less revenue proportion of expense 00.48% of freight and 8.28% passenger.	$2,966.88			$26,300.06		
Leaving	$1,069.03			Def. $3,679.58		
Less increased cost freight 50%, passenger 25%	$1,483.44			$5,907.98		
Leaving ..Def.	$414.41			Def. $9,587.56		
Less Taxes and Rentals	356.29			1,740.08		
Def.	$770.70			Def. $11,327.64		
Amount due at 6% interest on portion of value assignable to the state part of the traffic	$1,031.54			$5,845.37		
Total deficit...	$1,802.24			$17,173.01		

269 (4) Kansas City Southern Railway Company.

	Freight.			Passenger.		
	Amount.	% of all freight.	% of all earnings.	Amount.	% of all pass.	% of all earnings.
Miscellaneous state earnings	$7,533.64	00.85	00.72	$10,493.05	6.50	1.00
Less revenue proportion of expense 00.85% freight and 6.50% passenger.	$4,856.03			$9,193.12		
Leaving	$2,677.61			$1,299.93		
Less increased cost freight 50%, passenger 25%	$2,428.02			$2,107.35		
Leaving	249.59			Def. 807.42		
Less taxes and Rentals	$189.82			242.93		
	59.77			Def. $1,050.35		
Amount due at 6% interest on portion of value assignable to the state part of the traffic	$1,736.44			$2,411.73		
Total deficit ..	$1,676.67			$3,462.08		

270 (5) Missouri, Kansas and Texas Railway Company.

	Freight.			Passenger.		
	Amount.	% of all freight.	% of all earnings.	Amount.	% of all pass.	% of all earnings.
Miscellaneous state earnings	$3,547.90	00.22	00.15	$54,885.77	8.17	2.38
Less revenue proportion of expense 00.22% freight and 8.17% passenger.	$2,223.42			$42,205.40		
Leaving	$1,324.48			$12,680.37		
Less increased cost freight 50%, passenger 25%	$1,111.71			$9,505.26		
Leaving	212.77			$3,175.11		
Less taxes and Rentals	261.84			$4,776.63		
Def.	49.07		Def.	$1,601.52		
Amount due at 6% interest on portion of value assignable to the state part of the traffic	$940.24			$14,918.48		
Total deficit ..	$989.31			$16,520.00		

271 (6) Chicago, Burlington and Quincy Railroad Company.

	Freight.			Passenger.		
	Amount.	% of all freight.	% of all earnings.	Amount.	% of all pass.	% of all earnings.
Miscellaneous state earnings	$31,743.33	00.39	00.26	$347,600.91	8.44	2.82
Less revenue proportion of expense 00.39% freight and 8.44% passenger.	$26,495.08			$297,705.12		
Leaving	$5,248.25			$49,895.79		
Less increased cost freight 50%, passenger 25%	$13,247.54			$66,666.19		
Leaving ..Def.	7,999.29		Def.	16,770.40		
Less Taxes and Rentals .....Cr.	47.72		Cr.	519.28		
Def.	$7,951.57		Def.	$16,251.12		
Amount due at 6% interest on portion of value assignable to the state part of the traffic	$8,294.97			$89,968.56		
Total deficit ..	$16,246.54			$106,219.68		

272 (7) Chicago Great Western Railway Company.

	Freight.			Passenger.		
	Amount.	% of all freight.	% of all earnings.	Amount.	% of all pas.	% of all earnings.
Miscellaneous state earnings	$837.23	00.32	00.21	$6,777.18	5.21	1.73
Less revenue proportion of expense 00.32% freight, and 5.21% passenger.	$636.44			$6,583.14		
Leaving	$200.79			$194.04		
Less increased cost freight 50%, passenger 25%	$318.22			$1,541.54		
Leaving ..Def.	117.43		Def.	$1,347.50		
Less taxes and Rentals	39.34			589.36		
Def.	$156.77		Def.	$1,936.86		
Amount due at 6% interest on portion of value assignable to the state part of the traffic	$227.13			$1,871.12		
Total deficit...	$383.90			$3,807.98		

273 If the commodities affected by the Freight Act of 1907 are alone considered, irrespective of and separate from the earnings from other freight, the rates are plainly confiscatory, and not only fail to bring any return upon the portion of the property devoted to such use, but do not enable any complainant to meet operating expenses. The following tables are in this respect submitted as findings of the earnings of and expenses fairly chargeable to these commodities for a period which is representative.

(1) St. Louis & San Francisco.

For the three months representative period the result is:

The gross earnings upon the commodities affected by the Freight Act of 1907, for three months, are $56,699.26, or $226,797.04 for the year, which is 10.94% of all state freight earnings. Applying this to the state freight statement, there is the result:

All earnings from this class of state freight were for 3 months	$56,699.26
All state freight expenses were $382,405.32 for three months, and 10.94% thereof chargeable to these commodities	41,835.14
	$14,864.12
Diminution if the rates fixed by the Act of 1907 had been charged	11,389.27
	$3,474.85
10.94% of Extra cost at 50%, $130,246.94	$14,249.02
10.94% of Interest, $117,775.28	12,884.62
10.94% of Valuation, $132,091.26	14,450.78

274 (2) Atchison, Topeka & Santa Fe.

The gross earnings upon the commodities affected by the Freight Act of 1907, for six months are $47,137.00, or $94,274.00 for the year, which is 33.4% of all state freight earnings. Applying this to the findings as to state freight, there is this result:

All earnings from this class of state freight were for six months	$47,137.00
All state freight expenses were $96,085.30 and 33.4% thereof chargeable to these commodities	32,092.49
Leaving	$15,044.51
Diminution if the rates fixed by the Act of 1907 had been charged	$13,885.87
	$1,158.64
33.4% of Extra cost at 50%, $43,443.57	$14,510.15
33.4% of Interest, $17,934.56	5,990.14
33.4% of Valuation, $23,089.55	7,711.91

(3) Chicago, Rock Island & Pacific.

For the three months representative period July, August and September, 1907, there was this result:

Revenue actually received on said commodities being 7.24% of total revenue actually received on all freight traffic in Missouri for said three months	$60,639.75

Operating expenses, taxes, rentals and hire of equipment applicable to said revenue for said three months arrived at as follows:	
Total operating expenses, taxes, rentals and hire of equipment, assigned to freight traffic $693,427.16. Proportion (7.24% based on revenue) assigned to commodities affected by maximum freight act of 1907	$50,204.13
275 Net revenue on said commodities for said three mos.	$10,435.62
Deduct the diminution in revenue if said act of 1907 had been in effect	9,989.43
Leaving	$446.19
Deduct extra cost of transporting state freight traffic, assuming such extra cost to be 50%. Schedule 4 shows that 50% increased cost increases revenue percentage from 18.02% to 24.79%, an increase of 6.77% or 37.57%. 37.57% of 7.24% equals 2.72%. 2.72% of total operating expenses excluding taxes, rentals, etc., $618,100.58, equals	$16,812.34
Deficit	$16,366.15

(4) Kansas City Southern.

The gross earnings upon commodities affected by the Act of 1907 for six months on $14,014.31 or $28,028.62 for the year, which is 36.17% of all state freight earnings. Applying this to the state freight statement there is this result:

All earnings from this class of state freight were for six months	$14,014.31
All state freight expenses were $26,000.96 and 36.17% of this amount would be	9,404.55
Leaving	$4,609.76
Diminution if rates fixed by the Act of 1907 had been charged	2,957.58
	$1,652.18
36.17% of extra cost at 50%, $11,735.85	$4,244.86
36.17% of interest, 5,295.38	1,915.34
36.17% of valuation, 13,768.01	4,979.89

276 (5) St. Louis & Hannibal.

The gross earnings upon commodities affected by the Act of 1907 for one year are 33%, or $29,020.86.

Applying this to the state freight statement there is this result:

All earnings from this class of freight were.....	$29,020.86
All state freight expenses were $76,348.95 and 33% of this amount is.....	25,195.15
Leaving	3,825.71
Diminution if rates fixed by the Act of 1907 had been charged	15,126.02
Deficit.....	11,300.31
33% of extra cost at 50%, $12,026.69.....	$3,968.81
33% of interest, $16,359.44.....	5,398.61
33% of valuation, $43,041.07.....	14,203.55

(6) Missouri, Kansas & Texas.

Gross earnings on commodities affected by the Act of 1907 for six months (at 33% of total state freight earnings) would be $91,547.45 or $183,094.90 for the year.

Applying this to the state freight statement there is this result:

All earnings from this class of freight were, for six months	$91,547.45
All state freight expenses were $192,155.42 and 33% of this amount would be.....	63,411.29
Leaving	28,136.16
Diminution, if rates fixed by Act of 1907 had been charged	20,222.85
	$7,913.31
33% of extra cost at 50%, $73,879.86.....	$24,380.00
33% of interest, $62,439.68.....	20,605.09
33% of valuation, $75,469.96.....	24,905.09

277 (7) Chicago, Burlington & Quincy.

The gross earnings upon commodities affected by the Act of 1907 for one year were $526,532.72, which is 31.92% of all state freight earnings, for the year 1905.

Applying this to the state freight statement there is this result:

All earnings from this class of state freight were for one year (31.92% of $1,580,529.64).....	$504,505.06
All state freight expense- were $1,322,165.90, and 31.92% of this amount is.....	422,035.35
Leaving.....	$82,469.71
Diminution, if the rates fixed by the Act of 1907 had been charged	117,388.07
Deficit.....	$34,918.36
31.92% of extra cost at 50%, $472,092.76.....	$150,692.00
31.92% of valuation, $409,325.04.....	130,656.55

(8) Kansas City, Clinton & Springfield Railway Company.

The gross earnings upon commodities affected by the Act of 1907, for one year are $14,365.00. Since the figures of the company do not show miscellaneous freight earnings, they are estimated at 31.92% of all state freight based on C. B. & Q. figures, as the percentage is the smallest with that company.

Applying this to the state freight statement there is this result:

Earnings from this class of state freight were, for one year	$14,365.00
All state freight expenses were $28,438.06 and 31.92% of this amount is	9,077.43
Leaving	5,287.57
Diminution, if rates fixed by the Act of 1907 had been charged	2,970.21
	$2,317.36
278 31.92% of extra cost at 50%, $8,483.30	$2,707.87
31.92% of interest, $23,881.78	7,624.06
31.92% of valuation, $33,846.76	10,803.89

Such an estimate as to this company is reasonable, in that this company is actually losing money upon all its business, so that a finding as to these matters is unnecessary.

(9) Chicago Great Western.

Gross earnings on commodities affected by the Act of 1907 for three months were $7,817.28, or $31,269.12 for the year, which is 57.81% of all state freight earnings.

Applying this to the state freight statement, there is this result:

All earnings from this class of state freight were (earnings of 3 months $7,817.28 x 2)	$15,634.56
All state freight expenses were $23,610.13 and 57.81% of this amount would be	13,649.02
Leaving	$1,985.54
Diminution, if rates fixed by the Act of 1907 had been charged	1,777.34
	$208.20
57.81% of extra cost at 50%, $9,347.72	$5,403.92
57.81% of interest, $7,164.08	4,141.55
57.81% of valuation, $8,057.70	4,658.16

(10) Other Companies.

As the cases of the other companies abide the result of that of some other case, a finding in this respect is unnecessary.

279 Afterwards, to-wit on the 30th day of December, 1908, a Certificate of the Trial Judge was filed. Said Certificate is in words and figures as follows, to wit:

In the Circuit Court of the United States, Western District of Missouri, Western Division.

No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY
vs.
HERBERT S. HADLEY, Attorney General, and Others.

No. 2989.

THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
vs.
JOSEPH P. RICE and Others.

No. 2990.

THE ST. LOUIS SOUTH WESTERN RAILWAY COMPANY
vs.
JOSEPH P. RICE and Others.

No. 2991.

THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY
vs.
JOHN A. KNOTT and Others.

No. 2992.

THE ST. LOUIS, KANSAS CITY & COLORADO RAILROAD CO.
vs.
JOHN A. KNOTT and Others.

No. 2993.

THE KANSAS CITY SOUTHERN RAILWAY COMPANY
vs.
JOHN A. KNOTT and Others.

No. 2994.

THE ST. LOUIS & HANNIBAL RAILWAY COMPANY
vs.
JOHN A. KNOTT and Others.

No. 2995.

THE MISSOURI PACIFIC RAILWAY COMPANY
vs.
JOHN A. KNOTT and Others.

280 No. 2996.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY CO.
VS.
JOHN A. KNOTT and Others.

No. 2997.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY
VS.
JOHN A. KNOTT and Others.

No. 2998.

CHICAGO, BURLINGTON & QUINCY RAILWAY COMPANY
VS.
JOHN A. KNOTT and Others.

No. 2999.

QUINCY, OMAHA & KANSAS CITY RAILWAY COMPANY
VS.
JOHN A. KNOTT and Others.

No. 3000.

THE WABASH RAILWAY COMPANY
VS.
JOHN A. KNOTT and Others.

No. 3001.

THE ST. JOSEPH & GRAND ISLAND RAILWAY COMPANY
VS.
JOHN A. KNOTT and Others.

No. 3002.

KANSAS CITY, CLINTON & SPRINGFIELD RAILWAY COMPANY
VS.
JOHN A. KNOTT and Others.

No. 3003.

CHICAGO GREAT WESTERN RAILWAY COMPANY
VS.
JOHN A. KNOTT and Others.

No. 3004.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY
VS.
JOHN A. KNOTT and Others.

No. 3006.

THE CHICAGO & ALTON RAILWAY COMPANY
vs.
JOHN A. KNOTT and Others.

Certificate.

Heretofore this court by order made on the 5th day of March, 1906, referred each and all of the foregoing eighteen cases to
281 F. L. Schofield, a Special Master to take the evidence and report the same to this court with certain findings, as will appear from the order now of record.

Later on the said Schofield proceeded with said hearing and took certain evidence, much of it being oral testimony taken down by stenographers and duly transcribed, and other evidence being in the form of exhibits.

Later on this court by agreement of parties, to-wit, on the 13th day of June, 1908, made an order that the said cases should come on for trial October 5th, 1908, to the Court on the evidence thus taken by the said Special Master, Mr. Schofield, together with such other and further evidence as might be submitted by the respective parties.

October 5th, 1908, the hearing of said cases was upon the application of the defendants continued until the 9th day of November, 1908, at which time the hearing of said case was proceeded with and continued *with* until and including November 14th, 1908 at which time there was an adjournment of the hearing until December 14th, 1908, when the hearing was again resumed and proceeded with until the 30th day of December, 1908, when said hearing was concluded, and each, all and every of the parties rested.

The said cases were heard and are to be determined only upon the evidence received by the court, consisting in part of the evidence taken before the Special Master, Mr. Schofield, and in part received by the court in open court, and there was no other or further evidence received by the court, or offered by any party other than that hereinafter scheduled. And in the event of an appeal of any or all of the cases, the clerk will certify to said evidence, subject, however, to such rights as the parties may have under the laws and rules of the Appellate Court to designate what shall be certified up and what omitted.

282 The evidence so taken by the Special Master, returned and filed in open court and offered in evidence as hereinbefore stated, is as follows:

Five volumes designated as in case No. 2998, marked Volumes I to V, both inclusive, and one volume designated, "2998, Chicago, Burlington & Quincy; Index and Exhibits." Also annual statements of the Chicago, Burlington & Quincy Railroad Company to the Railroad Commissioners for the years ending, respectively, June 30th, 1904, June 30th, 1905, June 30th, 1906, (three copies).

Also four volumes returned designated as "2995: Missouri Pacific," marked, respectively, Volumes I to IV, inclusive, together

with one volume marked "2995, Missouri Pacific Railway: Index and Exhibits." Also the tax return of the Missouri Pacific for June 1st, 1904, June 1st, 1905, the 26th Annual Report of the Missouri Pacific Railway, Exhibit- 34, 36*b*, and 24, in case No. 2995. Also seven analytical sheets of the Missouri Pacific Railway upon form #1939, and seven analytical sheets of the Missouri Pacific Railway upon form #1941, and two analytical sheets of the Missouri Pacific Railway upon form #1940, in case No. 2995.

Also four volumes of testimony marked I to IV inclusive, in case No. 3000, Wabash Railroad. Also one volume endorsed, "3000 Wabash Railroad: Index and Exhibits." Also exhibits marked in case No. 3000 and being designated "Exhibit 15," being the 15th and 17th Annual Report- of the Directors of the Wabash Railroad Company for the years ending June 30th, 1904, and June 30th, 1906, respectively. Also the 15th and 16th Annual Report- of the Directors of the Wabash Railroad Company for the years ending June 30th, 1904, and June 30th, 1905, respectively, each marked "Exhibit 16." Also the 16th and 17th Annual Reports of the Directors of the Wabash Railroad Company for the years ending respectively June 30th, 1905, and June 30th, 1906, each marked "Exhibit 17."

Also one volume returned by the Special Master marked "2989, Atchison, Topeka & Santa Fe Proceedings," as showing cer-
283 tain proceedings had before him the said Special Master.

All the evidence offered before the said Special Master and returned into court and used in these cases and all the proceedings had therein, are included in the papers thus specifically enumerated, each volume and document hereinbefore referred to being now identified by the endorsement thereon of the Trial Judge, "Smith McPherson, Judge."

And pursuant to the order of the court and by agreement of parties, the said cases came on for trial to the Court, November 9th, 1908, and said trial was continued from time to time with certain adjournments until December 30th, 1908, when the trial of all the cases was concluded and the said cases by the Court taken under advisement. The evidence taken before the court in open court is contained in volumes identified as follows:

Volume I, marked filed by the clerk, December 30th, 1908, and further identified by the signature of Smith McPherson, Trial Judge. Volume II, marked filed by the clerk December 30th, 1908, and further identified by the signature of Smith McPherson, Trial Judge Volume III, marked filed by the Clerk December 30th, 1908, and further identified by the signature of Smith McPherson, Trial Judge. Volume IV, marked filed by the Clerk December 30th, 1908, and further identified by the signature of Smith McPherson, Trial Judge. Volume V, marked filed by the Clerk December 30th, 1908, and further identified by the signature of Smith McPherson, Trial Judge, said volume V being made up of Exhibits, which together with the exhibits hereinafter scheduled, each and all being marked filed by the Clerk December 30th, 1908, and further identified by the signature of Smith McPherson, Trial Judge, are all the exhibits offered

in open court in the trial of said cases; the exhibits other than those in Volume V being as follows: Exhibits A, B, C, D, E, G, H, I, and Exhibits No. 54, 59, 7, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 4, and Exhibit " Douglas I."

284 And said cases hereinbefore entitled were heard and fully submitted to the Court, on the evidence and the exhibits hereinbefore scheduled, and on no other evidence than that hereinbefore scheduled. And each, all and every of the parties before final submission after the introduction of the foregoing, by counsel in open court said no further evidence was desired or would be offered in the cases.

This certificate is now signed and ordered filed as of this date after the submission of the cases and all of them.

Done in open court this December 30th, 1908.

(Signed) SMITH McPHERSON, *Judge.*

285 Afterwards, to-wit, on the 30th day of December, 1908, the following order was made and entered of record:

UNITED STATES OF AMERICA, *sct:*

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. 2997.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY
vs.
JOHN A. KNOTT et al.

Also

In Equity.

RAILROAD COMPANIES
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Being Cases Numbered 2988, 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2998, 2999, 3000, 3001, 3002, 3003, 3004, & 3006.

Now on this day again come the parties by their solicitors. Thereupon the hearing of evidence is concluded, whereupon both parties rest, and this case is fully submitted and is by the Court taken under advisement and the orders and decree herein will be rendered and entered of record as of this date.

(Signed) SMITH McPHERSON, *Judge.*

December 30th, 1908.

286 Afterwards, to-wit, on the 21st day of January, 1909, the following order was filed and entered of record:—

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY
vs.
HERBERT S. HADLEY, Attorney General, and Others.

No. 2989.

THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
vs.
JOSEPH P. RICE and Others.

No. 2990.

THE ST. LOUIS SOUTH WESTERN RAILWAY COMPANY
vs.
JOSEPH P. RICE and Others.

No. 2991.

THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY CO.
vs.
JOHN A. KNOTT and Others.

No. 2992.

THE ST. LOUIS, KANSAS CITY & COLORADO RAILROAD CO.
vs.
JOHN A. KNOTT and Others.

No. 2993.

THE KANSAS CITY SOUTHERN RAILWAY COMPANY
vs.
JOHN A. KNOTT and Others.

No. 2994.

THE ST. LOUIS & HANNIBAL RAILWAY COMPANY
vs.
JOHN A. KNOTT and Others.

No. 2995.

THE MISSOURI PACIFIC RAILWAY COMPANY
vs.
JOHN A. KNOTT and Others.

No. 2996.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY CO.
VS.
JOHN A. KNOTT and Others.

287 No. 2997.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY
VS.
JOHN A. KNOTT and Others.

No. 2998.

CHICAGO, BURLINGTON & QUINCY RAILWAY COMPANY
VS.
JOHN A. KNOTT and Others.

No. 2999.

QUINCY, OMAHA & KANSAS CITY RAILWAY COMPANY
VS.
JOHN A. KNOTT and Others.

No. 3000.

THE WABASH RAILWAY COMPANY
VS.
JOHN A. KNOTT and Others.

No. 3001.

THE ST. JOSEPH & GRAND ISLAND RAILWAY COMPANY
VS.
JOHN A. KNOTT and Others.

No. 3002.

KANSAS CITY, CLINTON & SPRINGFIELD RAILWAY CO.
VS.
JOHN A. KNOTT and Others.

No. 3003.

CHICAGO GREAT WESTERN RAILWAY COMPANY
VS.
JOHN A. KNOTT and Others.

No. 3004.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY
VS.
JOHN A. KNOTT and Others.

No. 3006.

THE CHICAGO & ALTON RAILWAY COMPANY
vs.
JOHN A. KNOTT and Others.

Order.

Each of the foregoing causes came on for hearing this January 20, 1909, the parties appeared by counsel, and admitted that the term of office of Herbert S. Hadley, as Attorney General had expired, and Elliott W. Major was the duly qualified and acting successor and Attorney General of Missouri. He appeared in person, and by the consent of himself and all counsel in the cases, it is ordered that without any formal pleadings, Elliott W. Major, as Attorney General of Missouri be and he is hereby substituted for and in the stead of Herbert S. Hadley, so that all pleadings against and on behalf of said Hadley shall apply to the substituted party as fully as if made against and for him.

288

(Signed) SMITH McPHERSON, *Judge.*

Afterwards, to-wit, on the 20th day of February, 1909, the following order was filed and entered of record, to-wit:

In the Circuit Court of the United States, Western District of Missouri, Western Division.

No. 2988. Equity.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY
vs.
HERBERT S. HADLEY et al.

And Equity Cases No. 2989, 2991, 2993, 2994, 2997, 2998, 3002, 3003.

Order.

Whereas, after the cases above numbered had been submitted and argued by agreement of all parties at the request of the Court James Peabody and F. P. Johnson, expert accountants for the railroad companies, and A. P. Taliaferro and T. A. Hamilton, expert accountants for the defendants, compiled statements showing the earnings, operating expenses, etc., for each of said railroad companies for periods of time as therein stated, and affixed a certificate to the effect that said statement in each case correctly shows the results on the various assumptions set forth therein, which said certificate was signed by all four of said expert accountants.

It is therefore ordered that each of said statements be filed and made of record, herein.

Done in open court this February 20th, 1909.

(Signed) SMITH McPHERSON, *Judge.*

289 No. 2997. Missouri, Kansas & Texas Railway Company.

Earnings, Operating Expenses, etc., on State Business—Missouri—for Six Months, viz., July, August, October, November, and December, 1907, *and January,* 1908.

Railroad's Basis.

	Freight.	Passenger.	Total.
1. Earnings (not including miscellaneous)	277,416.52	246,368.53	523,785.05
2. Operating expenses	171,910.48	189,381.89	361,292.37
3. Net operating revenue	105,506.04	56,986.64	162,492.68
4. Taxes and rentals (revenue basis)	20,244.94	21,433.45	41,678.39
5. Diminution in revenue under law of 1907.....	20,222.85		20,222.85
Total....	40,467.79	21,433.45	61,901.24
6. Net operating revenue less taxes, rentals and diminution in revenue	65,038.25	35,553.19	100,591.44
7. Bond interest....	62,439.68	55,490.41	117,930.09
8. Result on flat revenue basis after deducting bond interest	2,598.57	*19,937.22	*17,338.65
9. Six per cent interest on 3 times the assessed value in 1907 (revenue basis) is	75,469.96	67,070.48	142,540.44

[*In red ink in copy.]

	Freight.	Passenger.	Total.
10. Result on flat revenue basis after deducting six per cent interest on 3 times the assessed value of property	*10,431.71	*31,517.29	*41,949.00
290 No. 2997. M., K. & T. Ry. Co. Page 2. R. R. Basis.			
11. Result on flat revenue basis after deducting bond interest (line 8)	2,598.57	*19,937.22	*17,338.65
12. Extra cost based on 50% more for freight, in proportion to revenue, and 15% more for passenger, in proportion to revenue, than on all other business	66,590.77	17,047.46	83,638.23
13. Result of applying basis shown in line 12 to figures in line 11.....	*63,992.20	*36,984.68	*100,976.88
14. Extra cost on basis of twice as much for freight, in proportion to revenue, and 25% more on passenger, in proportion to revenue, as compared with all other business..	121,883.63	27,482.59	149,366.22
15. Result of applying basis shown in line 14 to figures in line 11.....	*119,285.06	*47,419.81	*166,704.87

[*In red ink in copy.]

	Freight.	Passenger.	Total.
16. Extra cost on basis of 3 times as much for freight, in proportion to revenue, and 35% more on passenger, in proportion to revenue, as compared with all other business	212,942.61	37,194.47	250,137.08
17. Result of applying basis shown in line 16 to figures in line 11.....	*210,344.04	*57,131.69	*267,475.73
18. Extra cost on basis of 50% more on passenger, in proportion to revenue, than on other passenger business		50,677.46	
19. Result of applying basis shown in line 18 to figures in line 11.....		*70,614.68	

291 No. 2997. M., K. & T. Ry. Co. Page 3. R. R. Basis.

20. Result on flat revenue basis after deducting 6% on 3 times assessed value of property (line 10	*10,431.71	*31,517.29	*41,949.00
21. Extra cost based on 50% more for freight, in proportion to revenue, and 15% more for passenger in proportion to revenue than on all other business	66,590.77	17,047.46	83,638.23

[*In red ink in copy.]

	Freight.	Passenger.	Total.
22. Result of applying basis shown in line 21 to figures in line 20.....	*77,022.48	*48,564.75	*125,587.23
23. Extra cost on basis of twice as much for freight, in proportion to revenue, and 25% more for passenger, in proportion to revenue, as compared with all other business..	121,883.63	27,482.59	149,366.22
24. Result of applying basis shown in line 23 to figures in line 20..	*132,315.34	*58,999.88	*191,315.22
25. Extra cost on basis of 3 times as much for freight, in proportion to revenue, and 35% more on passenger, in proportion to revenue, as compared with all other business	212,942.61	37,194.47	250,137.08
26. Result of applying basis shown in line 25 to figures in line 20..	$223,374.32	$68,711.76	$292,086.08
27. Extra cost based on 50% more for passenger, in proportion to revenue, than on other passenger business....		50,677.46	
28. Result of applying basis shown in line 27 to figures in line 20..		*82,194.75	

[*In red ink in copy.]

292 No. 2997. M., K. & T. Ry. Co. Page 4.

State's Basis.

	Freight.	Passenger.	Total.
1. Freight and passger revenue....	277,416.52	246,368.53	523,785.05
Miscellaneous earnings	3,547.90	54,885.77	58,433.67
Total earnings..	280,964.42	301,254.30	582,218.72
2. Operating Epenses (ton-mile and passenger - mile proportion)	106,622.90	214,694.80	321,317.70
3. Net Operating revenue	174,341.52	86,559.50	260,901.02
4. Taxes and Rentals (ton-mile and passenger - mile basis)	12,556.39	24,298.26	36,854.65
5. Diminution in Revenue under Law of 1907....	20,222.86		20,222.86
Total.....	32,779.25	24,298.26	57,077.51
6. Net Operating Revenue, less taxes, rentals and diminution in Revenue,....	141,562.27	62,261.24	203,823.51
7. Proportion on Earnings basis of 3 times assessed value of property in 1907	1,273,503.31	1,365,437.92	2,638,941.23
8. Figures on line #6 are as to figures on line #7	11.12%	4.56%	7.72%
9. Results on flat ton-mile and passenger-mile basis after deducting taxes, rentals, etc. (Line 6)...	141,562.27	62,261.24	203,823.51

	Freight.	Passenger.	Total.
10. Extra cost based on 30% more for freight per ton-mile and reduced cost based on 10% less for passenger per passenger mile than for Interstate...	27,792.69	13,121.39	14,671.30
11. Result of applying basis shown in line 10 to figures in line 9.....	113,769.58	75,382.63	189,152.21

293 No. 2997. M., K. & T. Ry. Co. Page 5. State's Basis

	Freight.	Passenger.	Total.
12. Figures on line 11 are as to figures on line 7.....	9.00%	5.52%	7.17%
13. Extra cost based on 50% more for freight per ton-mile and reduced cost based on 20% less for passenger per passenger - mile than for Interstate	45,377.89	27,379.27	17,998.62
14. Result of applying basis shown in line 13 to figures in line 9.....	96,184.38	89,640.51	185,824.89
15. Figures on line 14 are as to figures on line 7.....	7.55%	6.56%	7.04%

The attached statement of earnings, operating expenses, etc., of the Missouri, Kansas & Texas Railway Company, for the months of July, August, October, November and December, 1907, and Janu-

ary, 1908, correctly shows the results on the various assumptions set forth therein.

For the Railroads, JAS. PEABODY.
F. P. JOHNSON.
For the State, A. P. TALIAFERRO.
T. A. HAMILTON.

294 Afterwards, to-wit, on the 6th day of March, 1909, the following order was filed and entered of record, to-wit:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY
vs.
HERBERT S. HADLEY et al.

And Also Numbers 2989 to 3004, Inclusive, and 3006.

Order.

By consent of parties, in accordance with agreements heretofore made and not recorded, it is on this March 6th, 1909, ordered:

1. The answers heretofore filed by the Attorney General and Railroad Commissioners, to which replications were filed, shall be treated and adopted by the other defendants who heretofore demurred herein, as their answers duly replied unto.

2. All the evidence taken before the Special Master and in open court, regardless of the particular case in which it was offered, shall be regarded as having been taken and offered in each of the cases tried.

(Signed) SMITH McPHERSON, *Judge.*

We consent to the above order.

FRANK HAGERMAN,
Solicitor for Complainant.
E. W. MAJOR,
Att'y General.
SANFORD B. LADD,
JOHN KENNISH,
F. W. LEHMANN,
Solicitor- for Appearing and Answering Defendants.

295 In the Circuit Court of the United States, Western District of Missouri, Western Division.

No. 2988. Equity.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY
vs.
HERBERT S. HADLEY et al.

And Equity Cases No. 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004, 3006.

Findings of Fact.

Prior to the argument the Court requested counsel on both sides to submit requests for findings of fact. Complainants' counsel did this. Defendants' counsel have not done so. Complainants' requests have been considered, some of which are embodied within the following findings, and some are not.

The following are the findings of fact that the Court makes as based upon the evidence herein;

1. The complainants are the eighteen railroad companies owning and operating lines of railroad in Missouri, they doing all of the state and interstate railroad business therein, and all of them, except the St. Louis & Hannibal Company, having lines of railroad both within and without the state. That company is wholly within the state, extending from Hannibal, Missouri, to the south 120.61 miles. The Kansas City, Clinton & Springfield Company is a road of about 160 miles in length with 151.01 miles in the state. All the other companies have lines extending into a number of other
296 states, one of them extending into thirteen other states and territories. These roads with their own lines and with their connecting carriers, carry all the traffic and do all the business, freight and passenger, within the state, whether of state or interstate character. The intra-state business is at all times herein referred to as state business. That part of the interstate business which neither originates within, nor has its destination within, but passes across the State of Missouri, is called transtate business.

2. The same roadbed, locomotives, cars, and trains including all facilities, are used for both classes of business, state and interstate. It is not practicable to conduct the business in any other way. This is so both from the standpoint of the public and that of the companies. If state business were to be carried alone upon some cars and trains, and interstate alone upon others, the expenses would be enormously increased, and almost if not quite prohibitive, while the public would be subjected to delays, inconveniences, and great expense. By reason of all this the business cannot practically be separated.

3. Both from a geographical and railway standpoint Missouri is situated differently from the other states of the Union, there only being two or three other states that have a resemblance to it in these

particulars and each of them in a lesser degree. This is so because the Mississippi is its boundary on the east all the distance. From a railroad standpoint the Missouri River is its boundary line on the west, although physically the Missouri River is only the western boundary line from the northwest corner of the state about half way to the southwest corner. But at the half way point, namely, Kansas City, the river turns directly to the east, and continues its way to the Mississippi River. In its production, business and commerce all that part of Missouri to the north of the Missouri River is practically like the south half of Iowa, the country districts producing large quantities of live stock and grain for the market, as well as much bituminous coal. The south half of Missouri is entirely different. The amount of grain and live stock is much less than in the north half of the state. But the south half has a large amount of timber, stone, lime, lead, zinc, iron and fruits. St. Louis on the east is a city of nearly a million people, Kansas City on the west nearly half as many, while St. Joseph has more than one hundred and twenty-five thousand people. These three cities carry on large manufacturing interests. The grain, live stock, and packing house interests at
297 Kansas City and St. Joseph are enormous. For a third of a century or more for reasons which need not be repeated, rates from the East were fixed to the Mississippi River, and later on, from thence to the Missouri River. The interstate rates either in or out were the one plus the other. It was the same from the West. It was likewise the same for the trans-state business going in either direction. Such is the method existing today. This brought about the fact which for years has existed and exists today, that the short line of road between the two rivers fixes the freight rates. To illustrate, the Burlington road is the short line between the rivers, being 198 miles from Hannibal to St. Joseph, and the same distance, within a few miles, to Kansas City. The roads between Kansas City and St. Louis, and there are four at least of them, including the Burlington, *is* an average distance of nearly 300 miles, but some of the roads being fifty miles or more farther between the points than the others. This brings about the fact that all freight rates between any one point on the one river and any point on the other river are the same as the rate from Hannibal to St. Joseph over the Burlington line. That is to say, the freight rates on any road regardless of distance are the same between St. Louis and either Kansas City or St. Joseph that they are between Hannibal and St. Joseph over the Burlington line. This has given the three cities of St. Louis, Kansas City and St. Joseph great advantages over other points. Competent persons say that to change this system will work irreparable harm to the three cities named, as well as to all other places within the state, by driving both the jobbing and manufacturing business to seaboard points. As to this no finding is made nor opinion expressed because it is believed to be a matter of policy upon which this court in these cases should express no opinion. As to the passenger rates, by reason of competition, the fare is the same between Kansas City and St. Louis, the shorter line fixing the rates, thereby

compelling the longer road to be at much expense without remuneration. This is likewise true as to all competitive points.

As to the foregoing question of rates and fares, there is no United States Statute governing the same, and there is no Missouri statute upon the subject except the two statutes questioned by the bills, one dealing with certain commodities per car per distance, and the other fixing the passenger fares at two cents. Aside from these two statutes, and as to any bearing they have as to charges between the two rivers, the conditions named have been brought
298 about and exist today by reason of a long time custom and by reason of transportation, actual and probable, upon the two rivers.

Still further bearing on the question are the following facts: Joplin is a city in the southwestern part of the state of more than twenty-five thousand people. There are a number of towns adjacent thereto, giving that county (Jasper) a population of 200,000 people. It is a very large mining district of lead and zinc. Between Kansas City and Joplin three of complainants herein have railroads. The Missouri Pacific at all points between the said places is within the state. Each of the other two between said points is partly without the state, starting within and going out and coming back, thereby making it interstate business as to two of the roads between Kansas City and the Joplin district. Between Kansas City and St. Joseph, four roads do the business. The Missouri Pacific and Chicago Great Western is each part of the distance within the state of Kansas, while the Burlington and St. Joseph & Grand Island Company is each wholly within the State of Missouri between the two cities. Between St. Joseph and St. Louis two of complainants do practically all the business, which is very large in both passenger and freight. These are the Burlington and Missouri Pacific. Between said cities the Burlington line is wholly within the state. But the Missouri Pacific line is partly within the state of Kansas, crossing the Missouri River at Atchison and coming back into the state at Kansas City. On the foregoing facts the finding is that the short line between two competitive points necessarily fixes the rate, and the Missouri statutory rates under the statutes in question fix the rates between the cities named. But this is so solely because of the geographical location of cities and railroads, and competition, and long time custom. It is not so either because of a statute or any judicial determination by any of the Courts of Missouri.

4. Pending this litigation, each of the complainant companies made and delivered to defendants statements showing the earnings and expenses for certain periods, which statements have been taken by both sides as sufficiently illustrative of the situation for the determination of these cases. The companies extended to the state officers, defendants herein, acting by experts by them selected, the opportunity to examine the statements and the books, papers, vouchers, and records of the companies. The freight rate statute of 1907 as to commodities mentioned allowed greater rates than did the statute of 1905 assailed by the original bills of complaint

herein, and it was conceded at the trial that if the rates fixed
299 by the Act of 1907 were confiscatory, that those fixed by the Act of 1905 were likewise.

5. The parties were producing evidence and preparing their evidence for about one year with the aid of experts on each side. These experts were all men of high character and great proficiency as railroad accountants. The experts on each side were given the fullest opportunity and all the time desired to obtain the information and put the same in form in exhibits, schedules, and reports, all of which are in evidence in the cases, supplemented by the oral testimony of each of the experts with reference to all of these things.

6. It was conceded by the experts that the companies fairly, accurately and honestly kept their books showing the facts in these findings set forth. The experts of the state and of the companies have thereby been enabled to present with certainty and precision all the earnings within the state, both state and interstate business. But obtaining and compiling this information by the experts has been at great expense of time and money. One exception to the foregoing is to be noted as to passenger fares for a short period of time after the two cent fare law became operative. By agreement of both sides in open court in June, 1907, this Court issued a temporary writ of injunction against the enforcement of the freight rate statute. The complainants asked for a temporary injunction against the enforcement of the two cent passenger fare statute. This Court held that the statute should be given a trial for five months and ascertain the result by actual operation. In preparing the order counsel, no doubt by inadvertence, fixed three months as the period for trial as to results. But by acquiescence of both sides, or if not, by delays with which the Court was not chargeable, such status remained for more than one year, and the cases were not actually brought on for trial until in November, 1908. But after the statute became operative in June, 1907, and this Court denied the temporary writ of injunction, the interstate passenger rates remained as they were for a period of about two months. During the time that condition prevailed parties both coming into and going out of Missouri on interstate journeys would buy tickets to the state line, thereby obtaining the benefit of the two cent fare for all distance within the state. It was not possible for the companies to show the truth as to the number of such trips, and therefore it is not possible for the Court to find just how much of the earnings *were* on account of such interstate trips. But the extent, whatever it was, would make an erroneous showing as to state earnings, though favorable to defendants, because
300 such earnings were of an interstate character. But even though for the short time a part of the business was thus carried on so that additional earnings were erroneously placed to the credit of the state, still the results are not changed, for the error was against, and not in favor of, complainants.

Freight earnings, both state and interstate, are made up from earnings of transportation and another item called "Miscellaneous freight," composed of switching, demurrage, and storage charges, and

track and equipment rentals. Passenger earnings are made up of passenger fares and miscellaneous, the latter covering mail, express, excess baggage, storage, rentals, and possibly some other terminal earnings.

No difference of consequence has arisen between the parties as to the expense of doing the entire business in the state. With reasonable certainty the expenses for doing the freight and passenger, including miscellaneous of each, can be and have been separated.

The earnings are known and fixed and in these findings stated to a certainty. But as to the expenses as between state and inter-state business, there has been a controversy and such is the principal controversy in the cases. There is no known fixed or certain rule for determining how this separation of expenses shall be made. The same cannot be made with mathematical certainty. Complainants claim that the division should be made upon the revenue basis; defendants claim that it should be made upon the ton mile basis for freight, and passenger mile basis for passengers, classifying the miscellaneous earnings as and with freight and passenger earnings respectively. By the revenue basis is meant to assign such proportion of the total expense in the state on that class of business as the earnings of that class of state business bears to all the earnings state and interstate from the same class, or, which is the same thing, ascertain what the percentage of all expenses is of all earnings, then multiply that by the state earnings of any class, and thus obtain the sum to be assigned as state expense. The ton mile basis as to freight means the assignment as state freight expenses of any class of business such proportion of all state expense as the number of ton miles of state freight bears to the total ton miles of all freight hauled within the state. By the passenger mile basis is meant the assignment as state passenger expenses such proportion of all passenger expenses as the number of passengers
301 in state business carried one mile bears to the whole number of passengers state and interstate carried one mile.

For reasons stated in an opinion herein filed, the revenue basis has been and is adopted as the only logical basis to use in arriving at a correct conclusion. The one basis or the other as a whole must be adopted. Either side can make a better showing by adopting the one basis in part of the accounting, and the other basis for the other. Neither should be and is allowed to do this. As will presently appear, the state has attempted to do this in making its passenger earnings accountings.

7. Each basis for accounting has some defects, but they are minor and not controlling and do not change the result if the revenue basis is taken.

The expense of doing the state business over interstate is greater for carrying freight by at least fifty per cent., and at least twenty-five per cent. for carrying passengers. Therefore this extra cost must be added to the expenses after they have been ascertained so as to obtain the total expense. If the ton mile basis of division were adopted, the extra cost should also be added. This would require the use of another multiplier sufficient to bring the sum total

of the state freight expense equal to that found herein, to actually represent the cost as shown by the evidence. Any apportionment of passenger expense upon the passenger mile basis would be unfair and unjust, although much more favorable to the companies than if made upon the revenue basis.

8. All things considered, the evidence shows the cost of doing the different classes of state business as between state and interstate apportioned upon the revenue basis with added extra cost brings a result in these findings stated, which is fair and representative and just. The Court finds, aside from the revenue basis, that the evidence shows the amount ascertained in each case as the expense and extra cost, is fair and justly represents the expense of doing each class of state business. The extra cost as to each complainant for doing the state business over interstate is more than fifty per cent. in case of freight, and more than twenty-five per cent. in case of passenger. This extra expense as thus found is considerably in excess of these figures and the figures used are adopted as the minimum. The sum total of this extra cost if ascertained according to the ton-mile theory, would not be changed because it is a question of multiplication, and one multiplier or another must be used accordingly as the theory is adopted. The find-
302 ings herein made on all the evidence represent in dollars the fair cost and expense fixed at a minimum. There has also been considered and found in each case such sum as would equal the diminution of earnings upon the commodities covered by the freight rate statutes of 1905 and 1907 if the rates thus fixed had been charged, as there would have been but for the temporary injunctions herein issued.

9. The evidence shows that each of complainants has regularly paid for many years interest on its bonds. There is no evidence to show that any of the railroad property within the State of Missouri has an undue amount of bonds or is unfairly bonded, and the evidence does not show that any of the bonds provide for interest in any sum greater than such bonds should carry. It does show that most of the bonds are at the lowest rates of interest, and much less than the legal rate allowable in Missouri. In thus referring to interest, the St. Louis & Hannibal, and Kansas City, Clinton & Springfield companies are excepted.

10. After the adoption of the two cent fare statute, there was no substantial increase in travel. For a few weeks there was a small increase largely brought about by interstate passengers buying tickets to state lines, and in part by the novelty. What if any increase of travel occurred by reason of said two cent fare, would be a mere approximation. It has not been substantial, and there is no reason to believe that any such increase will be brought about in the future by a two cent fare.

11. The values of the railroad properties in the State of Missouri are found, in the cases tried, to be as follows:

	Miles.	Value.	Value per mile.
St. Louis & San Francisco..	1688.89	$61,238,414.70	$36,259.00
Atchison, Topeka & Santa Fe	348.31	15,091,212.00	43,326.00
Chicago, Rock Island & Pacific	515.48	19,102,507.59	37,058.00
Kansas City Southern.....	174.48	8,039,084.40	46,075.00
St. Louis & Hannibal.....	120.61	1,143,077.02	9,477.00
Missouri, Kansas & Texas...	506.21	20,894,229.93	41,276.00
Chicago, Burlington & Quincy	1136.34	53,172,907.83	46,793.00
Kan. City, Clinton & Springf'd	151.01	2,380,222.48	15,762.00
Chicago Great Western	84.43	3,605,236.38	42,701.00

With the exceptions hereinafter stated, the above valuations of the properties of said nine companies as fixed, are in fact practically the same as those fixed by the state assessing board for the purpose of taxation. But aside and apart from the valuations thus fixed by the state board, these findings are that upon the whole evidence said properties are at least of the values above fixed. The evidence
303 shows that included in such sums the state board after making certain valuations under the heading of "all other property" fixed certain valuations, which when added give the totals as above. In argument it was contended that "all other property" included franchise values. This is not deemed important because it is difficult to see wherein steam railroad property like those involved, can have a franchise value. But waiving that, any franchise value that the state board could have considered, was necessarily so small a per cent of the total valuations fixed by the state board as to make no appreciable difference in the result of these cases, because it altogether admitted the remaining value is such that no road could obtain a return to which it is herein found to be entitled. But if the property has a franchise value for taxation, it also has such valuation as an earning power or, rather, upon which returns should be made. In fixing the valuations above set forth there have been considered the immense terminal values of most of the roads, the amount of stock and bonds outstanding, what it would cost to duplicate the properties both with and without terminals in the large cities, and all the evidence bearing on present values, and in fixing said valuations the sums found are the minimum valuations, the properties being worth at least the sums thus fixed.

The foregoing valuations are the same as fixed by the state assessing boards except as to the property of the St. Louis & Hannibal and of the Kansas City, Clinton & Springfield in the state, which are found to be worth sixty-six and two-thirds per cent of the valuations of the state boards.

12. The interest obligations except as already stated are just and reasonable and should be paid in full with some dividends to the stockholders in addition. However, and entirely aside from the

question of interest, the rates and earnings should in any event be such as to produce a fair return upon the valuations hereinbefore fixed.

And such earnings should be on the property within the state as would be equivalent to six per centum per annum, that per cent. being a fair return upon such valuations.

13. About the same time the two cent fare statute became operative, passes and other forms of reduced and free transportation, were abolished. Since that time they have not been given nor used except in cases of employés actually employed. The passenger
304 earnings were thereby increased, but such increase was not more than approximately one per cent.

14. After the arguments were concluded at the request of the Court, and with the consent of the parties, two experts upon each side, two selected by the railways and two by the defendants, worked with the Court for something more than one week. These experts were the same gentlemen representing their respective sides who had done much of the work in preparing the cases for the respective sides for hearing. The Court requested these experts to take the numerous tables and tabulate them already in evidence and to confine themselves wholly to that which had been introduced in evidence in the cases, and to make therefrom a new table for each of the nine cases showing the earnings and the expenses chargeable to each class of earnings according to the respective theories covered by counsel in the arguments. The Court further requested said four experts after preparing said new tables that if they agreed, to affix their signatures thereto. This they did below a certificate reciting that the statement of earnings, operating expenses, etc., as to each particular road for the time therein given, correctly shows the results on the various assumptions set forth therein. Said nine statements were by order of this Court, February 20, 1909, ordered filed and made of record in the cases. The said nine statements are now and here referred to, and are made part hereof. Each of said nine statements is found by the Court to be correct upon the respective theories presented. But the theory entitled as the "state's basis" is rejected for the reason that said statement improperly divides miscellaneous earnings, placing an undue proportion to the benefit of the state. And said basis improperly makes a division of expense upon the ton mile and passenger mile basis and does not allow a sufficient amount as extra cost of doing state business, and the same does not allow enough for the value of the property in that it deducts all sums included "all other property" multiplied by three.

If the companies had been permitted to charge the amounts per passenger per mile which they did charge and receive prior to the two cents passenger fare statute, they would have received in addition to that which they did receive by reason of the statute and by reason of the temporary injunction being denied for earnings within the state for a period of twelve months last preceding the submission of the cases, the following sums: (Interstate, however, not controlled by statute, but by changed conditions.)

305

Name of road	State passengers.	Interstate passengers.
St. L. & S. F. R. R.	$666,008.72	$509,730.63
A. T. & S. F. R. R.	30,885.52	66,271.03
C. R. I. & P. Ry. and St. L. K. C. & C. Ry.	124,469.14	111,178.60
K. C. So. Ry.	7,044.49	27,260.75
St. L. & H. Ry.	37,275.38	145.23
M. K. & T. Ry.	140,593.46	63,815.12
K. C. C. & S. Ry.	14,654.57	10,846.91
C. B. & Q. R. R.	394,878.77	261,556.41
C. G. W. Ry.	49,459.47	34,621.62

In the case of the St. Louis & San Francisco there were included in expenses sums paid as rentals under a lease given by the Kansas City, Fort Scott & Memphis Railway Company, whose common stock is owned by it which operates the company under a lease requiring it to pay to the holders of preferred stock of the Fort Scott & Memphis Company, as a rental, a sum equal to four per per cent annual dividends. This lease has been in force several years and is a fair one, and such rental has been treated as an operating expense, and is not included in fixed charges. And the Court finds that it is an operating expense. But even if it were a fixed charge, it is not material as the result would not be changed even though the rentals were carried into the fixed charge account. This is so because the amounts carried into state freight expense is only $8,428.56 and interstate passenger expense, $7,443.68.

15. In the statements hereinbefore referred to made and signed by the four experts, while they correctly set forth the figures on both the revenue theory and the ton and passenger mile theory the placing of the miscellaneous earnings of the passenger business is arbitrarily fixed and does not at all proceed upon the passenger mile basis, but for that the revenue basis is taken and fixed. Such earnings are arbitrarily divided without reference to the facts, the result being the state earnings and especially passenger, are fixed much higher than the actual earnings. Said division instead of following defendants' theory of the ton mile and passenger mile basis, is upon the revenue basis from which it is seen that this would be a splitting of theories. But from this and from all the evidence it is plain that even the ton and passenger mile basis theory cannot be worked out without showing a loss, to prevent which an arbitrary change of account muct be made as to the miscellaneous businiss. Even in making this arbitrary change the revenue basis is used, and yet the revenue division of expenses insisted upon by complainants is said not to be recognized. This is utterly
306 illogical and unfair, and does not represent the true facts as to whether such earnings are made at a loss, and there is no reliance whatever to be placed in such method of accounting. In so finding no reflection whatever is made upon the experts for the state, because as before found they are men of the highest character and learning and highly skilled in accounting and with a proper basis for

such accounting their work is perfect. And from their own statements upon the basis adopted herein for making such accounting by the Court, the freight business for the period mentioned would have been done at a loss if the statutory rates had been observed, and the passenger business was done at a loss under the two cent fare statute.

16. As to each of the nine companies whose cases have been submitted, the earnings and expenses and all other items are different in amount. So with the returns upon value to which the company is entitled. But in no event in any of the cases tried would the freight earnings, after making the deductions herein found result in a return to any company of more than three per cent. With nearly every company an actual deficit is shown if the 1907 statute had been in force. So under the two cent fare statute a deficit as to nearly all of the companies, and not more than two per cent. in case of any company. If the freight and passenger business should be combined with the miscellaneous of each class, there would be a deficit as to some and not to exceed three per cent. as to any of the others. In arriving at these conclusions and in adopting the tabulations herein set forth an account has been taken of all earnings, state and interstate, freight and passenger, and miscellaneous; the proportion which state and interstate freight and passenger exclusive of miscellaneous bear to all state and interstate, miscellaneous included, and that which they bear to all the earnings of the state; of miscellaneous freight and miscellaneous passenger earnings, undivided as between state and interstate, with the proportion they are of all earnings, freight and passenger; of all expenses divided as between all kinds of freight and passenger business, including miscellaneous, but not divided as between state and interstate; of the deductions to be made from all state freights not including miscellaneous of such proportion of expenses of all freight and passenger respectively as the freight and passenger earnings exclusive of miscellaneous bear to all earnings; of the deduction of the extra cost; of the diminution of freight earnings if the freight rate statute had been observed; of the value of that portion of the prop-
307 erty assignable to the particular traffic. This value is found by taking for each class of business of the entire value of the property in the state, such proportion as the earnings on that portion of the business bear to all the earnings in the state. A statement so made as to each of the companies whose cases have been submitted is as follows:

17. The periods taken are representative taken by the experts upon both sides, and were for the months set forth in the column headed "time." These tables do not follow the form taken by the experts in preparing exhibits to be introduced in evidence, nor do they follow the prepared form adopted by the four experts in making the nine statements hereinbefore referred to. An attempt has been made to abbreviate, but with the results the same as adopted by the experts. These are found to be correct as now to be set forth, and are adopted by the Court. If any error has crept into them, the Court will make proper correction upon his attention being called thereto after these findings have been filed, which can be readily done upon motion or suggestion. The tables adopted by the Court now follow:

Interstate Freight.

Company.	Time Mo.	Amount.	% of all freight.	% of all earnings.
St. L. & S. F. R. R....	3	$2,214,002.82	76.94	54.68
A. T. & S. F. R. R....	6	1,872,915.00	90.05	67.72
C. R. I. & P. Ry.....	3	665,228.16	79.38	59.86
K. C. So. Ry.....	6	702,249.91	79.35	67.11
St. L. & H. Ry.....	12	51,735.05	36.25	24.61
M. K. & T. Ry.....	6	1,333,455.26	81.73	57.89
C. B. & Q. R. R.....	12	6,454,699.87	78.75	52.40
K. C. C. & S. Ry.....	12	116,893.60	68.27	41.04
C. G. W. Ry.....	6	224,169.58	86.02	57.39

State Freight.

Company.	Amount.	% of all freight.	% of all earnings.
St. L. & S. F. R. R.....	$577,192.84	20.04	14.26
A. T. & S. F. R. R.....	141,133.00	6.79	5.10
C. R. I. & P. Ry.....	150,953.68	18.02	13.58
K. C. So. Ry.....	38,748.76	4.38	3.70
St. L. & H. Ry.....	87,941.99	61.62	41.84
M. K. & T. R. R.....	277,416.52	17.01	12.04
C. B. & Q. R. R.....	1,580,529.64	19.28	12.83
K. C. C. & S. Ry.....	45,003.15	26.29	15.80
C. G. W. Ry.....	29,129.36	11.18	7.45

308

Miscellaneous Freight.

Company.	Amount.	% of all freight.	% of all earnings.
St. L. & S. F. R. R.....	$86,814.57	3.02	2.14
A. T. & S. F. R. R.....	65,833.56	3.16	2.38
C. R. I. & P. Ry.....	21,815.70	2.60	1.96
K. C. So. Ry.....	144,046.62	16.27	13.77
St. L. & H. Ry.....	3,044.11	2.13	1.45
M. K. & T. Ry.....	20,603.37	1.26	0.89
C. B. & Q. Ry.....	161,579.41	1.97	1.31
K. C. C. & S. Ry.....	9,319.58	5.44	3.27
C. G. W. Ry.....	7,280.24	2.80	1.86

Interstate Passenger.

Company.	Amount.	% of all freight.	% of all earnings.
St. L. & S. F. R. R.....	$368,687.43	31.49	9.11
A. T. & S. F. R. R.....	355,318.12	51.81	12.85
C. R. I. & P. Ry.....	113,524.21	41.53	10.22
K. C. So. Ry.....	89,504.58	55.47	8.55
St. L. & H. Ry.....	198.19	0.29	0.09
M. K. & T. R. R.....	303,214.54	45.12	13.16
C. B. & Q. Ry.....	1,777,788.27	43.15	14.43
K. C. C. & S. Ry.....	41,145.00	36.22	14.45
C. G. W. Ry.....	72,360.87	55.62	18.53

State Passenger.

Company.	Amount.	% of all passenger.	% of all earnings.
St. L. & S. F. R. R.	$599,051.59	51.17	14.79
A. T. & S. F. R. R.	104,370.19	15.22	3.77
C. R. I. & P. Ry.	114,853.04	42.02	10.33
K. C. So. Ry.	31,865.28	19.75	3.05
St. L. & H. Ry.	52,667.38	78.04	25.05
M. K. & T. R. R.	246,368.53	36.66	10.70
C. B. & Q. R. R.	1,611,702.92	39.11	13.09
K. C. C. & S. Ry.	47,646.80	41.95	16.73
C. G. W. Ry.	38,105.03	29.28	9.75

Miscellaneous Passenger.

Company.	Amount.	% of all passenger.	% of all earnings.
St. L. & S. F. R. R.	$203,077.28	17.34	5.02
A. T. & S. F. R. R.	226,080.00	32.97	8.18
C. R. I. & P. Ry.	44,980.08	16.45	4.05
K. C. So. Ry.	39,973.54	24.78	3.82
St. L. & H. Ry.	14,619.99	21.67	6.96
M. K. & T. Ry.	122,458.22	18.22	5.32
C. B. & Q. R. R.	731,021.89	17.74	5.94
K. C. C. & S. Ry.	24,797.39	21.83	8.71
C. G. W. Ry.	19,643.99	15.10	5.02

309 18. All Freight and Passenger Expenses, including Miscellaneous, less taxes and rentals, and percentages to earnings, undivided as between State and Interstate.

Company.	Freight.	Passenger.	Taxes and rentals, freight.	Taxes and rentals, passengers.
St. L. & S. F. R. R.	1,802,813.26	974,816.61	112,452.04	38,979.63
A. T. & S. F.	1,382,738.65	572,167.20	32,361.50	10,854.04
C. R. I. & P.	619,199.73	317,633.62	74,227.43	21,015.44
K. C. So.	571,297.54	141,432.56	22,331.70	3,737.37
St. L. & H.	117,908.81	68,343.04	5,994.07	2,273.61
M. K. & T.	1,010,643.65	516,589.98	119,017.87	58,465.49
C. B. & Q.	6,793,610.60	3,527,301.81	12,235.30cr	6,152.58cr
K. C. C. & S.	98,988.29	138,384.77	9,182.36	5,749.38
C. G. W.	198,887.69	126,355.88	12,294.18	11,312.16

Company.	% of said expenses to earnings, exclusive of taxes and rentals. Freight.	Passenger.	Same, including taxes and rentals. Freight.	Passenger.
St. L. & S. F. R. R...	62.64	83.26	3.91	3.33
A. T. & S. F. R. R....	66.48	83.43	1.55	1.58
C. R. I. & P. Ry.....	73.89	116.20	8.86	7.68
K. C. So. Ry.....	64.55	87.66	2.52	2.31
St. L. & H. Ry.....	82.61	101.27	4.19	3.37
M. K. & T. Ry.....	61.95	76.87	7.29	8.69
C. B. & Q. Ry.....	82.88	85.60	0.00	0.00
K. C. C. & S. Ry.....	57.81	121.83	5.36	5.06
C. G. W. Ry.....	76.33	97.11	4.71	8.68

The time of the foregoing tables is the same as in first table above.

19. The following nine tables show the state earnings and expenses, valuation, return on value, and interest charge of the said nine roads respectively whose cases have been submitted. The other cases are to be covered by decrees by agreement the same as certain decrees of the nine cases, all of which is of record.

310 ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY.

Period, Three Months.

State earnings and expenses.	Freight.		Passenger.	
State earnings.....	577,192.84		599,051.59	
State expenses.....	361,644.33		498,716.20	
Leaving.....	215,548.51		100,335.39	
Less taxes and rentals...	22,760.29		20,097.90	
Leaving.....	192,788.22		80,237.49	
Extra cost of doing state business, freight 50%, passenger 25%	131,425.08		53,907.36	
Leaving.....	61,363.14		26,330.13	
Diminution in earnings if the state rates in question had been charged.	11,389.27		.....	
Leaving.....	49,973.87		26,330.13	
Valuation:				
Assignable proportion of value for representative period, and 6% interest thereon, is.....	130,988.97	14.26%	135,857.42	14.79%

Return on value:				
(*a*) Actual return upon the assignable value found in subdivision above, the amount shown in first subdivision above is	.....	2.29%	.....	1.16%
(*b*) Same without allowance for extra cost.	.....	8.2%	.....	3.5%
Interest charge:				
Actual interest charge paid on assignable properties	116,792.45		121,133.27	

311 ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY.

Period, Six Months.

State earnings and expenses.	Freight.		Passenger.	
State earnings	141,133.00		104,370.19	
State expenses	92,581.89		87,834.09	
Leaving	48,551.11		16,536.10	
Less taxes and rentals...	3,503.41		901.74	
Leaving.....	45,047.70		15,634.36	
Extra cost of doing state business, freight 50%, passenger 25%	41,859.55		17,947.71	
Leaving.....	3,188.15		2,313.35	(red ink) (deficit)
Diminution in earnings if the state rates in question had been charged.	13,885.87		.....	
Leaving.....	10,697.72	(red ink) (deficit)	2,313.35	(red ink) (deficit)
Valuation:				
Assignable proportion of value for representative period, and 6% interest thereon	23,089.35	5.10%	17,068.16	3.77%

Return on value:				
(*a*) Actual return upon the assignable value found in subdivision above, the amount shown in first subdivision above is.....	.....	nothing	.....	nothing
(*b*) Same without allowance for extra cost.	.....	8%	.....	5.49%
Interest charge:				
Actual interest charge paid on assignable properties	17,934.56		13,257.51	

312 THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY.

Period, Three Months.

State earnings and expenses.	Freight.		Passenger.	
State earnings	150,953.68		114,853.04	
State expenses	111,579.80		133,469.65	
Leaving.....	39,373.88		18,616.61	(red ink) (deficit)
Less taxes and rentals...	13,375.78		8,830.68	
Leaving.....	25,998.10		27,447.29	(red ink) (deficit)
Extra cost of doing state business, freight 50%, passenger 25%	41,919.82		17,501.61	
Leaving.....	15,921.72	(red ink) (deficit)	44,948.90	(red ink) (deficit)
Diminution in earnings if the state rates in question had been charged.	9,989.43		.....	
Leaving.....	25,911.15	(red ink) (deficit)	44,948.90	(red ink) (deficit)
Valuation:				
Assignable proportion of value for representative period and 6% interest thereon	38,911.81	13.58%	29,599.34	10.33%

Return on value:				
(*a*) Actual return upon the assignable value found in subdivision above, the amount shown in first subdivision above is.....	.....	nothing	.....	nothing
(*b*) Same without allowance for extra cost.	.....	2.47%	.....	nothing
Interest charge:				
Actual interest charge paid on assignable properties	24,907.02		18,946.21	

313 THE KANSAS CITY SOUTHERN RAILWAY COMPANY.

Period, Six Months.

State earnings and expenses.	Freight.		Passenger.	
State earnings	38,748.76		31,865.28	
State expenses	25,022.83		27,932.93	
Leaving.....	13,725.93		3,932.35	
Less taxes and rentals...	978.13		738.13	
Leaving.....	12,747.80		3,194.22	
Extra cost of doing state business, freight 50%, passenger 25%	11,711.60		5,346.15	
Leaving.....	1,036.20		2,151.95	(red ink) (deficit)
Diminution in earnings if the state rates in question had been charged.	2,957.58		.....	
Leaving.....	1,921.38	(red ink) (deficit)	2,151.93	(red ink) (deficit)
Valuation:				
Assignable proportion of value for representative period, and 6% interest thereon	8,923.38	3.70%	7,355.76	3.05%

Return on value:				
(*a*) Actual return upon the assignable value found in subdivision above, the amount shown in first subdivision above is.....	.....	nothing	.....	nothing
(*b*) Same without allowance for extra cost.	.....	6.58%	.....	2.6%
Interest charge:				
Actual interest charge paid on assignable properties	5,295.38		4,365.11	

314 THE ST. LOUIS & HANNIBAL RAILWAY COMPANY.

Period, Twelve Months.

State earnings and expenses.	Freight.		Passenger.	
State earnings	87,941.99		52,667.38	
State expenses	72,655.40		53,334.91	
Leaving.....	15,286.59		667.53	(red ink) (deficit)
Less taxes and rentals...	3,693.55		1,774.32	
Leaving.....	11,593.04		2,441.85	(red ink) (deficit)
Extra cost of doing state business, freight 50%, passenger 25%	12,026.69		2,444.68	
Leaving.....	433.65	(red ink) (deficit)	4,886.53	(red ink) (deficit)
Diminution in earnings if the state rates in question had been charged.	15,126.02		.....	
Leaving.....	15,559.67	(red ink) (deficit)	4,886.53	(red ink) (deficit)
Valuation:				
Assignable proportion of value for representative period, and 6% interest thereon	28,694.05	41.84%	17,179.40	25.05%

Return on value:				
(*a*) Actual return upon the assignable value found in subdivision above, the amount shown in the first subdivision above is.....	.....	nothing	.....	nothing
(*b*) Same without allowance for extra cost.	.....	nothing	.....	nothing
Interest charge:				
Actual interest charge paid on assignable property	16,359.44		9,794.55	

315 MISSOURI, KANSAS & TEXAS RAILWAY COMPANY.

Period, Six Months.

State earnings and expenses.	Freight.		Passenger.	
State earnings	277,416.52		246,368.53	
State expenses	171,910.48		189,381.89	
Leaving.....	105,506.04		56,986.64	
Less taxes and rentals...	20,244.94		21,433.45	
Leaving.....	85,261.10		35,553.19	
Extra cost of doing state business, freight 50%, passenger 25%.....	66,696.09		27,482.59	
Leaving	19,165.09		8,070.60	
Diminution in earnings if the state rates in question had been charged.	20,222.85		.....	
Leaving.....	1,057.84	(red ink) (deficit)	8,070.60	
Valuation:				
Assignable proportion of value for representative period, and 6% interest thereon	75,469.96	13.04%	67,070.48	10.70%

Return on value:				
(a) Actual return upon the assignable value found in subdivision above, the amount shown in the first subdivision above is.....	.....	nothing	.....	0.72%
(b) Same without allowance for extra cost.	.....	5.18%	.....	3.18%
Interest charge:				
Actual interest charge paid on assignable property	62,439.68		55,490.41 62,439.68	

316 CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY.

Period, Twelve Months.

State earnings and expenses.	Freight.		Passenger.	
State earnings	1,580,529.64		1,611,702.92	
State expenses	1,324,453.83		1,489,746.71	
Leaving.....	256,075.81		121,956.21	
Less taxes and rentals...	2,487.99 cr.		2,798.50 cr.	
Leaving.....	258,563.80		124,754.71	
Extra cost of doing state business, freight 50%, passenger 25%	484,129.29		158,205.70	
Leaving.....	225,565.49	(red ink) (deficit)	33,450.99	(red ink) (deficit)
Diminution in earnings if the state rates in question had been charged.	112,533.71		.....	
Leaving.....	338,099.20	(red ink) (deficit)	33,450.99	(red ink) (deficit)
Valuation:				
Assignable proportion of value for representative period, and 6% interest thereon	409,325.04	12.83%	417,620.02	13.09%

Return on value:				
(*a*) Actual return upon the assignable value found in subdivision above, the amount shown in the first subdivision above is.....	.....	nothing	.....	nothing
(*b*) Same without allowance for extra cost.	.....	2.11%	.....	1.79%
Interest charge:				
Actual interest charge paid on assignable property	132,735.02		135,424.89	

317 KANSAS CITY, CLINTON & SPRINGFIELD RAILROAD COMPANY.

For Period of Twelve Months.

State earnings and expenses.	Freight.		Passenger.	
State earnings	45,003.15		47,646.80	
State expenses	26,024.02		58,052.41	
Leaving.....	18,979.13		10,405.61	(red ink) (deficit)
Less taxes and rentals...	2,414.04		2,411.86	
Leaving.....	16,565.09		12,817.47	(red ink) (deficit)
Extra cost of doing state business, freight 50%, passenger 25%	8,483.30		7,625.00	
Leaving.....	8,081.79		17,577.91	(red ink) (deficit)
Diminution in earnings if the state rates in question had been charged.	2,970.21		.....	
Leaving.....	5,111.58		20,442.47	(red ink) (deficit)
Valuation:				
Assignable proportion of value for representative period, and 6% interest thereon	22,564.51	15.80%	23,892.67	16.73%

Return on value:				
(*a*) Actual return upon the assignable value found in subdivision above, the amount shown in the first subdivision above is.....	.....	1.36%	.....	nothing
(*b*) Same without allowance for extra cost.	.....	3.61%	.....	nothing
Interest charge:				
Actual interest charge paid on assignable property	23,881.78		25,288.48	

318 CHICAGO GREAT WESTERN RAILWAY COMPANY.

Period, Six Months.

State earnings and expenses.	Freight.		Passenger.	
State earnings	29,129.36		38,105.03	
State expenses	22,235.64		36,996.98	
Leaving.....	6,893.72		1,108.05	
Less taxes and rentals...	1,374.49		3,312.25	
Leaving.....	5,519.23		2,204.20	(red ink) (deficit)
Extra cost of doing state business, freight 50%, passenger 25%	9,347.72		6,090.35	
Leaving.....	3,828.49	(red ink) (deficit)	8,294.55	(red ink) (deficit)
Diminution in earnings if the state rates in question had been charged.	1,893.41		.....	
Leaving.....	5,721.90	(red ink) (deficit)	8,294.55	(red ink) (deficit)
Valuation:				
Assignable proportion of value for representative period, and 6% interest thereon	8,057.70	7.45%	10,545.32	9.75%

Return on value:		
(*a*) Actual return upon the assignable value found in subdivision above, the amount shown in the first subdivision above is.....	..... nothing	..... nothing
(*b*) Same without allowance for extra cost.	..... 2.69%	..... nothing
Interest charge:		
Actual interest charge paid on assignable property	7,164.08	9,375.81

319 20. The Court believes that the foregoing findings are all that are material and all that are necessary to make. However, if any party believes that any material finding of fact has been omitted, upon application of such party the same will be considered and made if deemed advisable. And likewise if any of the foregoing computations or figures have been erroneously made. But such application to be entertained must be made within thirty days from this date.

And each, all and every of the foregoing are made as the findings of the Court, and are now and here in open court this March 8th, 1909, ordered filed and made of record in said cases and all of them.

(Signed) SMITH McPHERSON, *Judge.*

319½ Afterwards, to-wit, on the 8th day of March, 1909, the following findings of fact was filed, to-wit:

320 Afterwards, to-wit, on the 22nd day of March, A. D. 1909, the same being a day of the regular November term of said court, a decree was filed and entered of record.

Said decree is in words and figures as follows:

In the Circuit Court of the United States, Western District of Missouri, at Kansas City.

No. 2997. Equity.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY, Complainant,
vs.
JOHN A. KNOTT, JOSEPH P. RICE, and FRANK A. WIGHTMAN, the Board of Railroad and Warehouse Commissioners of the State of Missouri, a Corporation Organized under the Laws of Missouri; Herbert S. Hadley, Attorney General of the State of Missouri; C. C. Kelley and M. P. Belch, Prosecuting Attorneys of Pettis and Cole Counties, Missouri, Respectively; J. F. Parker, Geo. West and M. Doherty; H. R. Oglesby, Railroad Commissioner of the State of Missouri; C. W. McAninch, I. M. Danforth, and A. L. Haggard, County Judges, and L. V. Ware, County Treasurer; John T. Heard and Elijah E. Johnston; and Elliott W. Major, Attorney General of the State of Missouri, Respondents.

Final Decree.

The above entitled case this March 8th, 1909 comes on for final decree upon the evidence and stipulations upon file and of record herein, the case having heretofore been fully argued and fully submitted and taken under advisement. And now at this time the Court being fully advised in the premises, the parties appearing by their respective counsel, for reasons stated in an opinion by the Trial Judge and findings of fact signed and filed herein, orders, adjudges and decrees:

1. The maximum freight rate laws of Missouri, of 1905 and 1907, and the passenger rate law of 1907, mentioned in paragraph 2 hereof, and set forth in the original bill and amendments and supplements thereto, are unreasonable and confiscatory; do not afford the complainant any fair or reasonable return upon the value of its property, and to comply therewith would take the property of complainant without due process of law. None of the provisions thereof
321 should or can be rightfully enforced against complainant, its officers, agents or employés. A finding of fact has been prepared and filed, and is hereby referred to as if made part hereof.

2. Defendants Elliott W. Major, Attorney General of the State of Missouri, John A. Knott, H. R. Oglesby and Frank A. Wightman, Railroad Commissioners of the State of Missouri, and each of them, their agents, employés and successors, are hereby enjoined from enforcing, or attempting, directly or indirectly, by suit or in any other manner whatsoever, to enforce against complainant, its officers, agents, employés or servants, any of the provisions of, or penalties provided for in the following acts of the legislature of the State of Missouri:

First, an act approved April 14, 1905, entitled:

"An act to amend article IV, chapter 12 of the Revised Statutes of Missouri of 1899, entitled 'Railroad classification, charges, com-

missioners,' by adding a new section thereto, to be known as section 1195*a*."

Second, an act approved April 15, 1905, entitled:

"An act, entitled, 'An act to amend chapter 12 of the Revised Statutes of Missouri, revision of 1899, entitled "Corporations, private," by repealing section 1194 of said Revised Statutes, being part of article IV of said chapter concerning railroad classification, charges, commissioners, and to enact in lieu thereof the following new sections providing for the regulation of freight charges by railroads and the recovery of penalties for the violation thereof.'"

Third, an act approved February 27, 1907, entitled:

"An act to repeal sections 1191 and 1192 of chapter 12, article 4, Revised Statutes of Missouri, 1899, entitled 'Railroad classification, charges, commissioners,' by striking out sections 1191 and 1192 and enacting the following new sections in lieu thereof to be known as sections 1191 and 1192 and 1192*a*."

Fourth, an act approved March 19, 1907, entitled:

"An act to repeal an act of the 43rd general assembly, approved April 15, 1905, entitled 'An act to amend chapter 12 of the Revised Statutes of Missouri, revision of 1899, entitled "Corporations, private," by repealing section 1194 of said Revised Statutes, being part of Article IV of said chapter, concerning railroad classification, charges, commissioners, and to enact in lieu thereof the following new sections providing for the regulation of freight charges by railroads and the recovery of penalties for the violation thereof,' and to repeal an act of the 43rd general assembly, approved April 14, 1905,
entitled 'An act to amend Article IV, chapter 12, of the Re-
322 vised Statutes of Missouri, 1899, entitled "Railroad classification, charges, commissioners," by adding a new section thereto, to be known as section 1195*a*, fixing the charges for carrying undressed stone, crushed rock and building or paving brick,' and to enact in lieu thereof certain new sections, to be known as sections 1194, 1194*a*-1 1194*b*-1 and 1194*c*-1, providing for the regulation of freight charges by railroads and prescribing the punishment for a violation thereof, which new section shall read as follows:"

Fifth, an act approved March 19, 1907, entitled:

"An act to amend article 4, chapter 12, Revised statutes of Missouri of 1899 by adding a new section thereto, to be known as section 1195*a*, and relating to freight charges and classifications."

3. The other defendants who are officers, and their successors, are likewise enjoined from enforcing or attempting to enforce any of said statutory enactments.

4. There is no evidence that either defendants Parker, West Doherty, Heard, or Johnston has threatened or intended to institute any action or proceedings against complainant as averred in the bill of complaint, and the said bill of complaint and the amendments and supplements is upon that ground as to said defendants in this paragraph named, dismissed. If, however, at any future time said defendants or either of them in this paragraph named, should take any action, or threaten or attempt to take any action under either or all of said statutes hereinbefore designated, then and in

that case the complainant herein may apply to this court by supplemental bill or otherwise as it may be advised for further orders in that behalf.

5. It is further ordered, adjudged and decreed that the defendants, or any of them, when the circumstances have changed so that the rates fixed as aforesaid shall yield to complainant reasonable compensation for the services aforesaid, may apply to this court by supplemental bill or otherwise, as defendants or either of them may be advised, for further orders in their behalf.

323 And complainant may at any time by supplemental bill or otherwise bring into the case any person, firm or corporation not expressly subject to this decree, who may attempt or threaten to take any action or institute any proceedings against complainant under any of said statutes hereinbefore designated, to the end that such orders or supplemental decrees may be entered as the facts and equity may warrant and require.

And the Court retains and reserves unto it jurisdiction over all the parties hereto, and all subjects matter herein not now covered by the pleadings, to the end that such other and further orders and decrees may be made hereafter as may become necessary by reason of any changed condition as to the facts, equities or rights that may hereafter take pdace or arise.

6. The taxable costs of the case including those covered by orders of the Court heretofore made or hereafter made on motion to tax or retax, including printing bill of Buxton-Skinner Stationery Company, shall be paid as follows, to-wit:

The one half by complainant and the other half by defendant to be recovered by execution to be issued by the Clerk of this Court upon application of any party in interest.

Done and ordered of record as of March 8th, 1909, in open court this March 22nd, 1909, at Kansas City, Missouri.

SMITH McPHERSON, *Judge.*

324 Afterwards, to-wit, on the 22nd day of March, 1909, a Motion to Modify Decree was filed. Said Motion is in words and figures as follows, to-wit:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 2988. Equity.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY

vs.

HERBERT S. HADLEY et al.

And Equity Cases No. 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004, 2006.

Motion.

Now comes complainant in each one of the above numbered cases, and separately moves the court to modify and change its opinion and decree in these respects:

1. To strike from the opinion paragraph 4 thereof because it is based upon a misconception, and is an erroneous statement of the law.

2. To strike from paragraph 11 of the opinion these words:

"It being a legislative act, and not a judicial one, this Court can not fix rates. If it could, two and one-half cent passenger rates would be fixed for the stronger roads, and three for the others. But that is for the legislature acting itself with experts, such as the State employed in these case-, or through a Commission with like assistance."

This, for the reason that it was no part of the duty of the court to so decide, and it is directly in conflict with the express findings of fact. At a two and a half cent rate the returns would not be sufficient compensation.

3. To strike from paragraph 11 of the opinion these words:

325 "Each party will pay the costs by such party made, except the compensation of the Master and stenographer. The half of those will be paid by complainants, and the other half by respondents."

This, for the reason that it is contrary to the rules and principles of law and equity and to good conscience.

4. To modify the decree so far as it taxes any costs against complainant, and to re-tax the same, for that there is no reason in equity or good conscience to tax same against it.

FRANK HAGERMAN,
Solicitor for Complainant.

326 Afterwards, to-wit, on the 3rd day of April, 1909, an Amended Motion to Modify Decree was filed. Said Amended Motion is in words and figures as follows, to-wit:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 2988. Equity.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY
vs.
HERBERT S. HADLEY et al.

And Equity Cases Nos. 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004, 2006.

Amended Motion.

Now comes complainant in each and every one of the above entitled causes, and separately amends the motion heretofore filed to modify and change the opinion and decree in each and every one of the said causes, and thereupon further moves the court:

1. To set aside the said decree as entered March 22, 1909, as of March 8, 1909, so far as concerns those defendants who neither

appeared nor demurred, nor adopted the answers of the railroad commissioners and attorney general, of which there are twenty-six in the eighteen cases. This, for the reason that the court erroneously made provisions for and against said defendants when they were not before it, and when complainants actually asked to dismiss as to them, to which, counsel for the said officers in open court consented. It is neither right nor just to enter a decree against persons not in court, nor can the court refuse complainant the right to dismiss as to them.

2. To set aside the portion of said decree dismissing the bill as to appearing and answering shippers, for that upon the findings and opinion, as well as upon the pleadings, the laws mentioned in paragraph 2 of the decree so entered as of March 8th, 1909, are confiscatory and void as to the shippers and passengers, and

327 those classes of persons represented by them. Those of them who defended adopted the answer and defense of the state officers. Each complainant is entitled to have the right involved duly established as against them. Because an injunction is found to be unnecessary as to them is no reason for dismissing the bill, and it is inconsistent to enter such dismissal and then attempt to hold jurisdiction against them in the future as if there had been some adjudication as to their rights.

3. To set aside the provision of said decree as to costs for that the attempt in the decree to cure the error already rendered in taxing the costs, is erroneous. In the original opinion the decision was that each party should pay the costs by such party made, except the compensation of the master and stenographer, half of which should be paid by complainants and the other half by defendants. In open court it was announced that such rule was adopted solely because the defendants were state officers and the state might not appropriate the amount necessary to meet these costs. The supreme court has twice decided this is no excuse and no justification for taxing the costs against the other party. It was conceded by both parties that those shippers who adopted the defense of the state officers and were defended by them ought not to be compelled to pay any additional costs. This concession was agreed to by the court; yet, in the decree as now entered, this concession of both sides and the court is absolutely ignored. The only change made as to the costs is that one-half of all the costs shall be paid by each party. There is no legal excuse or justification to tax any of these costs to complainants; ample money has already been appropriated to the state officers for the purpose of paying the same, and even if it had not been so appropriated, this would have been no reason for making an order that complainant should pay costs.

FRANK HAGERMAN,
Solicitor for Complainants.

328 Afterwards, to-wit, on the 3rd day of April, 1909, a Notice was filed. Said Notice is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General, et al., Defendants.

And Equity Cases Nos. 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004, and 3006.

Notice.

To Herbert S. Hadley, Attorney General, et al., Defendants, and their attorneys of record:

You are hereby notified that complainants will, upon Saturday, April 3rd, 1909, in the federal court room at Kansas City Missouri, call up before the Honorable Smith McPherson, Judge of said court, the motion to modify and change the opinion and decrees in the above entitled cause heretofore filed, copy of which was delivered to defendants, and also the amended motion, copy of which is herewith delivered to you.

FRANK HAGERMAN,
Solicitor for Complainants.

Received copy of above notice and of the motion and amended motion therein referred to this 27th day of March, 1909,

SANFORD B. LADD,
Solicitors for Defendants.

329 Afterwards, to-wit, on the 17th day of April, A. D. 1909, the same being a day of the regular November term of said Court, an amended final decree was filed.

Said amended final decree is in words and figures as follows:—

In the Circuit Court of the United States, Western Division of the Western District of Missouri, at Kansas City.

No. 2997.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General, et al., Defendants.

Amended Final Decree.

This case heretofore came on for hearing, the parties appearing by counsel, and was submitted upon the motion and amended mo-

tion to change and modify the decree of March 8, 1909, and the court being fully advised in the premises, now upon this 17th day of April, 1909, amends the said decree heretofore entered so that same shall read as follows:

The above entitled cause this March 8th, 1909, comes on for final decree upon the evidence and stipulations upon file and of record herein, the case having heretofore been fully argued and fully submitted and taken under advisement. And now at this time the court being fully advised in the premises, the parties appearing by their respective counsel, for reasons stated in an opinion by the trial judge and findings of fact signed and filed herein, orders, adjudges and decrees:

1. The maximum freight laws of Missouri of 1905 and 1907, and the passenger rate law of 1907, mentioned in paragraph 2 hereof, and set forth in the original bill and amendments and sup-
330 plements thereto, are unreasonable and confiscatory, do not afford the complainant any fair or reasonable return upon the value of its property, and to comply therewith would take the property of complainant without due process of law. None of the provisions thereof should or can be rightfully enforced against complainant, its officers, agents or employés. A finding of fact has been prepared and filed, and is hereby referred to as if made part hereof.

2. Defendants Elliott W. Major, Attorney General of the State of Missouri, John A. Knott, H. R. Oglesby and Frank A. Wightman, Railroad Commissioners of the state of Missouri, and each of them, their agents, employés and successors, are hereby enjoined from enforcing, or attempting, directly or indirectly, by suit or in any other manner whatsoever, to enforce against complainant, its officers, agents, employés or servants, any of the provisions of, or penalties provided for in the following acts of the legislature of the state of Missouri:

First, an act approved April 14, 1905, entitled:

"An Act to amend article IV, chapter 12 of the Revised Statutes of Missouri of 1899, entitled 'Railroad classification, charges, commissioners,' by adding a new section thereto, to be known as section 1195*a*."

Second, an act approved April 15, 1905, entitled:

"An Act, entitled 'An Act to amend chapter 12 of the Revised Statutes of Missouri, revision of 1899, entitled "Corporations, private," by repealing section 1194 of said Revised Statutes, being part of article IV of said chapter concerning railroad classification—charges—commissioners, and to enact in lieu thereof the following new sections providing for the regulation of freight charged by railroads and the recovery of penalties for the violation thereof.'"

Third, an act approved February 27, 1907, entitled:

"An Act to repeal sections 1191 and 1192 of chapter 12, article 4, Revised Statutes of Missouri, 1899, entitled 'Railroad classification—charges—commissioners,' by striking out sections 1191 and 1192 and enacting the following new sections in lieu thereof, to be known as sections 1191 and 1192 and 1192*a*."

Fourth, an act approved March 19, 1907, entitled:

"An act to repeal an act of the 43rd general assembly, approved April 15, 1905, entitled 'An act to amend chapter 12 of the Revised Statutes of Missouri, revision of 1899, entitled "Corporations,
331 private," by repealing section 1194 of said Revised Statutes, being part of article IV of said chapter, concerning railroad classification, charges, commissioners, and to enact in lieu thereof the following new sections providing for the regulation of freight charges by railroads, and the recovery of penalties for the violation thereof,' and to repeal an act of the 43rd general assembly, approved April 14, 1905, entitled 'An act to amend Article IV, chapter 12 of the Revised Statutes of Missouri, 1899, entitled "Railroad classifications, charges, commissioners," by adding a new section thereto, to be known as section 1195*a*, fixing the charges for carrying undressed stone, crushed rock and building or paving brick,' and to enact in lieu thereof certain new sections, to be known as sections 1194, 1194*a*-1, 1194*b*-1 and 1194*c*-1, providing for the regulation of freight charges by railroads and prescribing the punishment for a violation thereof, which new sections shall read as follows:"

Fifth, an act approved March 19, 1907, entitled:

"An act to amend article 4, chapter 12, Revised Statutes of Missouri of 1899, by adding a new section thereto, to be known as section 1195*a*, and relating to freight charges and classifications."

3. The other defendants who are officers, and their successors, are likewise enjoined from enforcing or attempting to enforce any of said statutory enactments.

4. There is no evidence that either defendants, West, Doherty, Heard or Johnson has threatened or intended to institute any action or proceeding against complainant as averred in the bill of complaint, but they have adopted the answers of the Railroad Commissioners and Attorney General. The said bill of complaint and the amendments and supplement to the extent and so far only as it seeks present injunctive relief against them, is upon that ground as to said defendants in this paragraph named, dismissed without prejudice. If, however, at any future time said defendants or either of them in this paragraph named, should take any action, or threaten or attempt to take any action under either or all of said statutes hereinbefore designated, then and in that case the complainant herein may apply to this court by supplemental bill or otherwise as it may be advised, for further orders in that behalf.

5. It is further ordered, adjudged and decreed that the de-
332 fendants, or any of them, when the circumstances have changed so that the rates fixed as aforesaid shall yield to complainant reasonable compensation for the services aforesaid, may apply to this court by supplemental bill or otherwise, as defendants or either of them may be advised, for further orders in their behalf.

And complainant may at any time by supplemental bill or otherwise bring into the case any person, firm or corporation not expressly subject to this decree, who may attempt or threaten to take any action or institute any proceedings against complainant under any of said statutes hereinbefore designated, to the end that

such orders or supplemental decree may be entered as the facts and equity may warrant and require.

And the court retains and reserves unto it, jurisdiction over all the parties hereto, and all subjects matter herein, not now covered by the pleadings, to the end that such other and further orders and decrees may be made hereafter as may become necessary by reason of any changed condition as to the facts, equities or rights that may hereafter take place or arise.

6. The taxable costs of the case including those covered by orders of the court, heretofore made or hereafter made on motion to tax or retax, and including printing bill of Buxton-Skinner Stationery Company shall be paid as follows, to-wit: The one-half by complainant and the other half by defendants who are Railroad Commissioners and the Attorney General, to be recovered by execution to be issued by the clerk of this court upon application of any party in interest.

7. Some of the defendants having announced their intention to appeal, it is now ordered that no appeal shall supersede the injunctive portions of this decree, but pending any such appeal the complainants shall be permitted to charge the rates permitted by sections 1191 and 1192 of the Revised Statutes of Missouri, 1899, the
333 same as if the Passenger Rate Act approved February 27, 1907, and herein held to be confiscatory, had not been passed. Complainant having by order herein of June 17, 1907, been required to temporarily adopt the rate fixed by said Passenger Rate Act, shall be and is hereby permitted, free from the interference of the parties and classes represented by them, who are hereby ordered not to interfere, to restore and put in force the rates authorized by said sections 1191 and 1192, this court reserving power and jurisdiction from time to time to enforce, change and modify this paragraph of this decree, as well as to protect the complainant in being restored to the right of which said order temporarily deprived it.

8. This decree shall be binding upon and enforceable against the said defendants, not dismissed, their assistants, agents, attorneys and employés, and any class or classes of persons or officers represented by them.

9. This cause is without prejudice dismissed as to defendant J. F. Parker.

(Signed) SMITH McPHERSON, *Judge.*

334 Afterwards, to-wit, on the 6th day of March, 1911, Declinations to join in appeal were filed. Said Declinations are in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 2997.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY, Complainant,

vs.

JOHN A. KNOTT, H. R. OGLESBY and FRANK A. WIGHTMAN, Railroad and Warehouse Commissioners; Elliott W. Major, Attorney General of the State of Missouri; C. W. McAninch, I. M. Danforth, and A. L. Haggard, Judges of the County Court of Pettis County, Missouri; L. V. Ware, Treasurer of Pettis County, Missouri; C. C. Kelley and M. P. Belch, Prosecuting Attorneys of Pettis and Cole Counties, Missouri, Respectively; George West and M. Doherty and John T. Heard and Elijah E. Johnston, Defendants.

To C. W. McAninch, I. M. Danforth and A. L. Haggard and William S. Sneed, Charles W. Knox and Milton Durrill, as successors to said C. W. McAninch, I. M. Danforth and A. L. Haggard in the offices of judges of the County Court of Pettis County, Missouri: L. V. Ware, C. C. Kelley and William D. O'Bannon, as successor of said C. C. Kelley in the office of Prosecuting Attorney of said Pettis County; M. P. Belch and Dudley F. Calfee, as successor of said M. P. Belch in the office of Prosecuting Attorney of Cole County, Missouri; George West, M. Doherty, John T. Heard and Elijah E. Johnston:

Each of you is hereby invited to join with the undersigned in a petition for an appeal in the above entitled cause to the Supreme Court of the United States, to reverse the decree in the above entitled cause, rendered on the 8th day of March, 1909, as amended by the decree herein entered on the 17th day of April, 1909, or you will be deemed to have acquiesced in the decree as amended, and we
335 will present said petition for an appeal and prosecute said appeal without joining you as a party.

Said petition for an appeal will be presented to the said Circuit Court for allowance, at the court room of said court in Kansas City, Jackson County, Missouri, on Monday, the 6th day of March, 1911, at 9 o'clock A. M., or as soon thereafter as said petition can be heard.

ELLIOTT W. MAJOR,
Attorney General of the State of Missouri;
JOHN A. KNOTT,
H. R. OGLESBY,
FRANK A. WIGHTMAN,
Railroad and Warehouse Commissioners,
Defendants.
ELLIOTT W. MAJOR,
Attorney General;
JOHN M. ATKINSON,
Assistant Att'y General;
SANFORD B. LADD,
Counsel for said Defendants.

Service of the above is accepted this 25 day of February, 1911, and we, the undersigned, severally decline to join in said petition for an appeal.

DUDLEY F. CALFEE.
M. P. BELCH.

Witness to Signature:

A. W. STEWART.

336 In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 2997.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY, Complainant,

vs.

JOHN A. KNOTT, H. R. OGLESBY and FRANK A. WIGHTMAN, Railroad and Warehouse Commissioners; Elliott W. Major, Attorney General of the State of Missouri; C. W. McAninch, I. M. Danforth, and A. L. Haggard, Judges of the County Court of Pettis County, Missouri; L. V. Ware, Treasurer of Pettis County, Missouri; C. C. Kelley and M. P. Belch, Prosecuting Attorneys of Pettis and Cole Counties, Missouri, Respectively; George West and M. Doherty and John T. Heard and Elijah E. Johnston, Defendants.

To C. W. McAninch, I. M. Danforth and A. L. Haggard and William S. Sneed, Charles W. Knox and Milton Durrill, as successors to said C. W. McAninch, I. M. Danforth and A. L. Haggard in the offices of judges of the County Court of Pettis County, Missouri; L. V. Ware, C. C. Kelley and William D. O'Bannon, as successor of said C. C. Kelley in the office of Prosecuting Attorney of said Pettis County; M. P. Belch and Dudley F. Calfee, as successor of said M. P. Belch in the office of Prosecuting Attorney of Cole County, Missouri; George West, M. Doherty, John T. Heard and Elijah E. Johnston:

Each of you is hereby invited to join with the undersigned in a petition for an appeal in the above entitled cause to the Supreme Court of the United States, to reverse the decree in the above entitled cause, rendered on the 8th day of March, 1909, as amended by the decree herein entered on the 17th day of April, 1909, or you will be deemed to have acquiesced in the decree as amended, and we
337 will present said petition for an appeal and prosecute said appeal without joining you as a party.

Said petition for an appeal will be presented to the said Circuit Court for allowance, at the court room of said court in Kansas City,

Jackson County, Missouri, on Monday, the 6th day of March, 1911, at 9 o'clock A. M., or as soon thereafter as said petition can be heard.

ELLIOTT W. MAJOR,
Attorney General of the State of Missouri;
JOHN A. KNOTT,
H. R. OGLESBY,
FRANK A. WIGHTMAN,
Railroad and Warehouse Commissioners,
Defendants.
ELLIOTT W. MAJOR,
Attorney General;
JOHN M. ATKINSON,
Assistant Att'y General;
SANFORD B. LADD,
Counsel for said Defendants.

Service of the above is accepted this 4th day of March 1911, and we, the undersigned, severally decline to join in said petition for an appeal.

Witness- to Signature-:

F. C. WILKERSON. WILLIAM D. O'BANNON.
W. D. O'BANNON. C. W. McANINCH.

338 In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 2997.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY, Complainant,
vs.
JOHN A. KNOTT, H. R. OGLESBY and FRANK A. WIGHTMAN, Railroad and Warehouse Commissioners; Elliott W. Major, Attorney General of the State of Missouri; C. W. McAninch, I. M. Danforth, and A. L. Haggard, Judges of the County Court of Pettis County, Missouri; L. V. Ware, Treasurer of Pettis County, Missouri; C. C. Kelley and M. P. Belch, Prosecuting Attorneys of Pettis and Cole Counties, Missouri, Respectively; George West and M. Doherty and John T. Heard and Elijah E. Johnston, Defendants.

To C. W. McAninch, I. M. Danforth and A. L. Haggard and William S. Sneed, Charles W. Knox and Milton Durrill, as successors to said C. W. McAninch, I. M. Danforth and A. L. Haggard in the offices of judges of the County Court of Pettis County, Missouri; L. V. Ware, C. C. Kelley and William D. O'Bannon, as successor of said C. C. Kelley in the office of Prosecuting Attorney of said Pettis County; M. P. Belch and Dudley F. Calfee, as successor of said M. P. Belch in the office of Prosecuting Attorney of Cole County, Missouri; George West, M. Doherty, John T. Heard and Elijah E. Johnston:

Each of you is hereby invited to join with the undersigned in a petition for an appeal in the above entitled cause to the Supreme

Court of the United States, to reverse the decree in the above entitled cause, rendered on the 8th day of March, 1909, as amended by the decree herein entered on the 17th day of April, 1909, or you will be deemed to have acquiesced in the decree as amended, and we
339 will present said petition for an appeal and prosecute said appeal without joining you as a party.

Said petition for an appeal will be presented to the said Circuit Court for allowance, at the court room of said court in Kansas City, Jackson County, Missouri, on Monday, the 6th day of March, 1911, at 9 o'clock A. M., or as soon thereafter as said petition can be heard.

ELLIOTT W. MAJOR,
Attorney General of the State of Missouri;
JOHN A. KNOTT,
H. R. OGLESBY,
FRANK A. WIGHTMAN,
Railroad and Warehouse Commissioners,
Defendants.
ELLIOTT W. MAJOR,
Attorney General;
JOHN M. ATKINSON,
Assistant Att'y General;
SANFORD B. LADD,
Counsel for said Defendants.

Service of the above is accepted this 4th day of March, 1911, and we, the undersigned, severally decline to join in said petition for an appeal.

Witness- to Signature-:

EUGENE W. CANEY
JNO. L. SULLIVAN
J. A. JOHNSTON
EUGENE W. CANEY
EUGENE W. CANEY
F. C. WILKERSON
F. C. WILKERSON
F. C. WILKERSON
F. C. WILKERSON
F. C. WILKERSON
F. C. WILKINSON.

WILLIAM D. O'BANNON
LOU V. WARE
ELIJAH E. JOHNSTON
C. C. KELLY
CHARLES W. KNOX
JOHN T. HEARD
I. M. DANFORTH
WM. S. SNEED
A. L. HAGGARD
M. DOHERTY
M. DURRILL.

340 In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 2997.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY, Complainant,

vs.

JOHN A. KNOTT, H. R. OGLESBY and FRANK A. WIGHTMAN, Railroad and Warehouse Commissioners; Elliott W. Major, Attorney General of the State of Missouri; C. W. McAninch, I. M. Danforth, and A. L. Haggard, Judges of the County Court of Pettis County, Missouri; L. V. Ware, Treasurer of Pettis County, Missouri; C. C. Kelley and M. P. Belch, Prosecuting Attorneys of Pettis and Cole Counties, Missouri, Respectively; George West and M. Doherty and John T. Heard and Elijah E. Johnston, Defendants.

To C. W. McAninch, I. M. Danforth and A. L. Haggard and William S. Sneed, Charles W. Knox and Milton Durrill, as successors to said C. W. McAninch, I. M. Danforth and A. L. Haggard in the offices of judges of the County Court of Pettis County, Missouri; L. V. Ware, C. C. Kelley and William D. O'Bannon, as successor of said C. C. Kelley in the office of Prosecuting Attorney of said Pettis County; M. P. Belch and Dudley F. Calfee, as successor of said M. P. Belch in the office of Prosecuting Attorney of Cole County, Missouri; George West, M. Doherty, John T. Heard and Elijah E. Johnston:

Each of you is hereby invited to join with the undersigned in a petition for an appeal in the above entitled cause to the Supreme Court of the United States, to reverse the decree in the above entitled cause, rendered on the 8th day of March, 1909, as amended by the decree herein entered on the 17th day of April, 1909, or you will be deemed to have acquiesced in the decree as amended, and we
341 will present said petition for an appeal and prosecute said appeal without joining you as a party.

Said petition for an appeal will be presented to the said Circuit Court for allowance, at the court room of said court in Kansas City, Jackson County, Missouri, on Monday, the 6th day of March, 1911, at 9 o'clock A. M., or as soon thereafter as said petition can be heard.

ELLIOTT W. MAJOR,
Attorney General of the State of Missouri;
JOHN A. KNOTT,
H. R. OGLESBY,
FRANK A. WIGHTMAN,
Railroad and Warehouse Commissioners,
Defendants.
ELLIOTT W. MAJOR,
Attorney General;
JOHN M. ATKINSON,
Assistant Att'y General;
SANFORD B. LADD,
Counsel for said Defendants.

Service of the above is accepted this 25 day of Feb. 1911, and we, the undersigned, severally decline to join in said petition for an appeal.

G. N. WEST.

Witness to Signature:
J. T. WALLACE.

342 Afterwards, to-wit, on the 6th day of March, 1911, the defendants' Assignment of Errors was filed. Said Assignment of Errors is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 2997.

MISSOURI, KANSAS AND TEXAS RAILWAY COMPANY, Complainant,
vs.
JOHN A. KNOTT, H. R. OGLESBY, and FRANK A. WIGHTMAN, Railroad and Warehouse Commissioners; Elliott W. Major, Attorney General of the State of Missouri; C. W. McAninch, I. M. Danforth, and A. L. Haggard, Judges of the County Court of Pettis County, Missouri; L. V. Ware, Treasurer of Pettis County, Missouri; C. C. Kelley and M. P. Belch, Prosecuting Attorneys of Pettis and Cole Counties, Missouri, Respectively; George West and M. Doherty and John T. Heard and Elijah E. Johnson, Defendants.

Assignment of Errors.

Now come John A. Knott, H. R. Oglesby and Frank A. Wightman, Railroad and Warehouse Commissioners, and Elliott W. Major, Attorney General of the State of Missouri, defendants in the above entitled cause, and aver that in the record and proceedings and decree in the above entitled cause, there is manifest error, in this:

1. The court erred in adjudging and decreeing, by its amended decree, that the maximum freight rate laws of Missouri of 1905 and 1907 are unreasonable and confiscatory and do not afford the complainant any fair or reasonable return upon the value of its property, and that to comply therewith would take the property of complainant without due process of law; because the evidence shows that said laws are reasonable and compensatory, and that they do afford the complainant a fair and reasonable return upon the value of its property; and upon the evidence in the case, the complainant's bill and its amended and supplementall bill, in so far as they sought for any relief against, or brought into question the validity of said maximum freight rate laws, should have been dismisesed.

3. The court erred in its amended decree in thereby adjudging and decreeing that the defendant, Elliott W. Major, Attorney General of the State of Missouri, be enjoined from enforcing, or attempting, directly or indirectly, by suit or in any other manner whatsoever, to enforce against the complainant, its officers, agents, employés

or servants, any of the provisions of or penalties provided for in the acts of the Legislature of the State of Missouri, mentioned in said decree, and approved, respectively, April 14, 1905, April 15, 1905, and two approved March 19, 1907.

3. The court erred in its amended decree in thereby adjudging and decreeing that the defendants, John A. Knott, H. R. Oglesby and Frank A. Wightman, Railroad Commissioners of the
343 State of Missouri, be enjoined from enforcing, or attempting, directly or indirectly, by suit or in any other manner whatsoever, to enforce against the complainant, its officers, agents, employés or servants, any of the provisions of or penalties provided for in the acts of the Legislature of the State of Missouri, mentioned in said decree, and approved, respectively, April 14, 1905, April 15, 1905, and two approved March 19, 1907.

4. The court erred in decreeing that the maximum freight rate laws of 1905 and 1907 are unreasonable and confiscatory, do not afford the complainant any fair or reasonable return upon the value of its property, and that to comply therewith would take the property of complainant without due process of law; because the evidence in the case is not sufficient to overcome the presumption in favor of the validity of those laws and the evidence does not establish clearly and beyond all doubt their invalidity.

5. The court erred in decreeing that the freight rate laws of 1905 and 1907 were confiscatory and therefore deprived the complainant of its property without due process of law, because the burden of proof upon that issue was upon the complainant, and that burden was not sustained. The exact gross revenue from intrastate business for any given period was easy of ascertainment. The ascertainment of the expense of earning that revenue was difficult by reason of the fact that interstate and intrastate freight were transported in the same trains and often in the same cars. It was in the power of the complainant, at any time during the litigation, to have determined, by actual observation and investigation for a period which should be typical, the volume of freight, both intrastate and interstate, carried on each of its trains within the State of Missouri during such period, the revenue from each class of freight and also, quite closely, the expense of moving each of said trains within the State, and to have exhibited to the court the result of such observation and investigation. The court would thus have been enabled to determine approximately how much of the total expense of moving said trains should be assigned to the intrastate and interstate freight, respectively, contained in them.

No evidence of this character was adduced, no test of this kind made. Upon this question the court was left to reach a conclusion upon the opinions of witnesses. No decree should have been rendered for complainant until this evidence of actual facts of vital importance, which was at its command, had been adduced to the court.

6. The court erred in adjudging and decreeing in its amended final decree herein that the maximum freight rate laws of Missouri, of 1905 and 1907, were unreasonable and confiscatory, and did not afford the complainant any fair or reasonable return upon the value

of its property, and that comply therewith would take the property of complainant without due process of law; and that none of the provisions thereof should or can be rightfully enforced against the complainant, its officers, agents, or employés.

Because it appears from the evidence that a very large part of the intrastate freight transported by the complainant is not governed as to the rates to be charged therefor by the Acts of 1905 and the Acts of 1907, but that the maximum rates for the transportation thereof are fixed by the State Board of Railroad and Warehouse Commissioners, by authority of law, conferring upon them that power. It further appears from the evidence, that the complainant has not been charging for the transportation of such freight the rates so fixed by the State Board of Railroad and Warehouse Commissioners,
but rates less than those so fixed. But the complainant failed
344 to show and made no effort to show what its revenue from
the intrastate freight business would have been had it charged the rates allowed by the State Board of Railroad and Warehouse Commissioners for such portion of the freight carried by it, as was not governed by the Acts of 1905 and 1907; and therefore there is no evidence in the case that if the complainant had charged such rates and had also complied with the Acts of 1905 and 1907, it would not have received a revenue from its intrastate freight business which would have afforded it a fair, adequate and just return for doing such business. If it had charged what it might, according to the law of the State, have charged for the transportation of such freight, its receipts for doing its entire intrastate freight business might, for any evidence which appears in the case, have been sufficient to afford it all the net profits to which it was entitled.

7. The court erred in adjudging and decreeing in the amended final decree that the maximum freight rate laws of Missouri of 1905 and 1907 are unreasonable and confiscatory and do not afford the complainant any fair or reasonable return upon the value of its property, and that to comply therewith would take the property of complainant without due process of law, because the said acts of 1905 took effect on the 16th day of June, 1905, and the original bill herein, alleging the unconstitutionality of said Acts of 1905, and seeking to enjoin their enforcement, was filed by the complainant on said 16th day of June, 1905, and on the same day a restraining order was issued herein, enjoining the defendants, the Railroad and Warehouse Commissioners, "from taking or making out or printing or delivering any schedule of rates for complainant, containing the maximum rates fixed by said Acts." And on the 12th day of July, 1905, the court continued said restraining order as a temporary injunction, which was in force as against said defendants from said date until the final decree was entered. Therefore, at the time of the filing of said bill and the issue of said restraining order, the defendants, said Railroad and Warehouse Commissioners, because the law had not yet taken effect, had enjoyed no opportunity to revise the then existing schedule of rates.

The said defendants, Railroad and Warehouse Commissioners, had authority, under the law, to fix maximum rates for the transportation of that portion of the intrastate freight for which rates

were not fixed by the Acts of 1905, which said portion was very large in volume and produced to the complainant much the larger part of its entire revenue for the transportation of intrastate freight. The said Railroad and Warehouse Commissioners might, if they had not been prevented by the restraining order and temporary injunction herein, have fixed such rates for the transportation of said portion of such intrastate freight, and made schedules therefor, which scedules should also have embraced the maximum rates for the commodities mentioned in the said Acts of 1905, as would have permitted the complainant, while observing said schedules and said acts of 1905, to have derived from its intrastate freight business, as a whole, a gross revenue sufficient to have yielded to it a fair, just and adequate net return or profit from the doing of its said intrastate freight business. The complainant should have deferred the institution of this suit until the said Board of Railroad and Warehouse Commissioners had fixed rates and adopted schedules so low as to disable the complainant from realizing an adequate revenue upon its entire intrastate freight business.

Therefore, the action was prematurely brought; and for
345 this reason no restraining order or temporary injunction or final decree should have been rendered as to either of said maximum freight rate Acts.

8. The court erred in adjudging and decreeing by its amended final decree that the passenger rate law of 1907, approved February 27, 1907, is unreasonable and confi-catory and does not afford the complainant any fair or reasonable return upon the value of its property, and that to comply therewith would take the property of complainant without due process of law; because upon the evidence in the case, said passenger rate law is reasonable and compensatory and does afford the complainant a fair and reasonable return upon the value of its property; and upon the evidence in the case, the complainant's bill, and its amended and supplemental bills, in so far as they sought for any relief against or brought into question the validity of said passenger rate law of 1907, should have been dismissed.

9. The court erred in decreeing that the passenger rate law of 1907 is unreasonable and confi-catory, does not afford the complainant any fair or reasonable return upon the value of its property, and that to comply therewith would take the property of complainant without due process of law; because the evidence in the case is not sufficient to overcome the presumption in favor of the validity of the law, and the evidence does not establish clearly and beyond all doubt its invalidity.

10. The court erred in its amended decree in thereby adjudging and decreeing that the defendant, Elliott W. Major, Attorney General of the State of Missouri, be enjoined from enforcing, or attempting, directly or indirectly, by suit or in any other manner whatsoever, to enforce against the complainant, its officers, agents, employés or servants, any of the provisions of or penalties provided for in said Act of the Legislature of the State of Missouri, mentioned in said decree and approved February 27, 1907.

11. The court erred in its amended decree in thereby adjudging and decreeing that the defendants, John A. Knott, H. R. Oglesby and Frank A. Wightman, Railroad Commissioners of the State of Missouri, be enjoined from enforcing, or attempting, directly or indirectly, by suit or in any other manner whatsoever, to enforce against the complainant, its officers, agents, employés or servants, any of the provisions of or penalties provided for in said act of the Legislature of the State of Missouri, mentioned in said decree and approved February 27, 1907.

12. The defendants, John A. Knott, H. R. Oglesby and Frank A. Wightman, Railroad and Warehouse Commissioners, for themselves assert that the court erred in that part of its decree whereby it enjoined them from enforcing, or attempting, directly or indirectly, to enforce against the complainant, its officers, agents, employes or servants, any of the provisions of or the penalties provided for in the passenger rate Act, approved February 27, 1907; because under the laws of the State of Missouri, they have no functions of any kind to perform in relation to rates for the carriage of passengers, nor do such laws vest in them any authority, or devolve upon them any duties to be performed by them, directly or indirectly, to require or compel obedience to any laws relating to rates for the carriage of passengers.

13. The court erred in permitting the complainant, against the objection of the defendants to file herein its alleged amended and supplemental bill of complaint and the amendment thereto, because the original bill was based upon the Acts of the 43rd General
346 Assembly of the State of Missouri, aproved April 14, 1905, and April 15, 1905, which fixed maximum rates for intrastate freight, and the alleged amended and supplemental bill and the amendment thereto is based upon the Acts of the 44th General Assembly of the State of Missouri, approved March 19, 1907, which repealed said Acts of 1905 and established a new maximum of rates for intrastate freight, and the Act of the 44th General Assembly of the State of Missouri, approved March 19, 1907, fixing rates for the transportation of fruit, and the Act of the 44th General Assembly of the State of Missouri, approved Febrary 27, 1907, fixing a maximum schedule of rates for passenger traffic, and the matters set forth in the said alleged amended and supplemntal bill of complaint and the amendment thereto, are not germane to or supplemental of the original bill of complaint herein.

14. The court erred in permitting the complainant, against the objection of defendants, to file the alleged amended and supplemental bill of complaint and the amendment thereto, so far as the same relates to the Act of the 44th General Assembly of the State of Missouri, approved February 27, 1907, fixing a maximum schedule of passenger rates, because the matters set forth in said alleged amended and supplemental bill, and the amendment thereto, relative to said Act of the 44th General Assembly of the State of Missouri, fixing a maximum schedule of passenger rates, are not germane to or supplemental of any of the matters alleged in the original bill.

15. The court erred in overruling the demurrer of the defendants

to the alleged amended and supplemental bill of complaint and the amendment thereto, because the matters contained in said alleged amended and supplemental bill of complaint and the amendment thereto, are not germane to or supplemental of the original bill, and if they constitute any cause of action whatever, constitute a new, original and independant cause of action not connected with or dependent upon the original cause of action, and one that accrued, if at all, long after the original bill was filed.

16. The court erred in overruling the demurrer of defendant to the portions and paragraphs of the alleged amended and supplemental bill of complaint and the amendment thereto, relative to the Act of the 44th General Assembly of the State of Missouri, fixing a maximum schedule of passenger rates, because such portions and paragraphs of the alleged amended and supplemental bill of complaint and the amendment thereto, are not germane to or supplemental of the original bill of complaint, and constitute, if anything, a new and independent cause of action not connected with or dependent upon the original cause of action, and one that accrued, if at all, long after the original bill was filed.

17. The court erred in granting to the complainant the relief asked, with respect to the Act of the 44th General Assembly of the State of Missouri, fixing a maximum schedule of passenger rates, because it was not authorized to take jurisdiction of that matter upon a bill of complaint filed as an amendment or supplement of a bill based upon Acts of the 43rd General Assembly of the State of Missouri, which were confined to freight rates and had been repealed.

18. The court erred in enjoining the defendant, Elliott W. Major, Attorney-General of the State of Missouri, from prosecuting the suits for injunctive relief, instituted by his predecessor in office, Herbert S. Hadley, in the State Court of Missouri, against the complainant prior to the filing of the alleged amended and supple-
347 mental bill of complaint herein.

19. The court erred in finding that the expense of doing the intrastate business over the intrastate is greater for carrying freight by at least fifty per cent. By this language in the finding is meant at least fifty per cent more in proportion to revenue, while upon the weight of credible evidence in the case, the expense of doing the intrastate freight business over the interstate is not greater than thirty per cent per ton per mile.

20. The court erred in finding that the evidence shows that the cost of doing the intrastate freight business, as between intrastate and interstate, apportioned upon the revenue basis with added extra cost, brings a result which is fair, representative or just.

21. The court erred in finding that aside from the revenue basis, the evidence shows that the amount ascertained by the court in any of the cases, as the expense and extra cost of doing the intrastate freight business, is fair or justly represents the expense of doing the intrastate freight business.

The appellants assert, on the contrary, that aside from the revenue basis, there is no evidence in the case from which the result as found

by the court as to the expense of doing the intrastate freight business can be reached.

22. The court erred in finding that the proper method of dividing the total expense of doing complainant's freight business in the State and assigning the proper proportion thereof to the intrastate freight business, was by the application of the revenue theory, and in accordance with that theory, dividing the total expense between the two classes of business in proportion to the revenue derived from each, and then to the portion thus assigned to the intrastate freight business, adding such an amount as would represent fifty per cent greater expense in proportion to revenue for the intrastate than for the interstate business. The consequence was to burden the intrastate freight business with a portion of the total expense very largely in excess of its proportion and a much greater share thereof than was actually incurred in doing that business.

The court should have found that the proper method of ascertaining that part of the total State freight expense justly assignable to the intrastate freight, was by determining, as closely as possible, the average cost per ton mile of handling and transporting intrastate and interstate freight, respectively. The average cost per ton per mile deducted from the average revenue per ton per mile (which is easily ascertainable from the evidence) would have produced the net revenue per ton per mile derived from each class of freight. The court erred in its finding which rejected this method, by the application of which the evidence in the case shows that complainant might have complied with the freight rate Acts of 1905 and 1907, and would still have derived from the doing of its intrastate business an adequate profit fully equivalent to any net return to which it is by law entitled.

23. The court erred in finding the sum total of the extra cost of doing the intrastate freight business would not be changed if ascertained according to the ton mile theory.

On the contrary, the evidence shows clearly that if the expense of doing the intrastate freight business be ascertained by the application of the ton mile theory, that expense would be found to be very much less than the amount found by the court; so much less as to leave to the complainant a reasonable net return for doing the business.

24. The court erred in finding that the revenue basis is
348 the proper method of ascertaining the expense of the intrastate passenger traffic. In adopting that method the court divided the total expense of the passenger business done in the State between the intrastate and the interstate business by assigning to each class such a proportion of such total expense as the revenue from each class of business bore to the total revenue from the State passenger traffic, and then adding to the proportion thus ascertained for the intrastate, such an amount as would represent twenty-five per cent greater expense in proportion to revenue for the intrastate than for the interstate business. The result of the application of this method was to charge the intrastate business with a much larger share of the total expense than was actually incurred in doing that business.

The true method is to ascertain the average revenue and expense of carrying a passenger one mile, in each class of business, and the difference would be the net revenue or deficit on each passenger mile.

The evidence shows that the net revenue per passenger mile is greater in the intrastate than in the interstate business, and that the net revenue from its intrastate passenger business, if charged for at the rates fixed by the Act of February 27, 1907, affords to the complainant a reasonable and adequate return for doing the business.

25. The court erred in finding that the expense of doing the State passenger business over the interstate is at least twenty-five per cent; this language meaning twenty-five per cent more in proportion to revenue. The evidence in the case does not support this finding.

26. The court erred in adopting the tables of earnings and expenses of the complainant, set forth in the finding of facts, because the said tables of expenses and of earnings did not cover any fairly representative period of operations of the complainant, and because said tables of expenses and earnings are not supported by any competent evidence in the case.

27. The court erred in finding that the short line between two competitive points, necessarily fixes the rate. If the rate is thus fixed it is because the complainant and the other railroad companies of the State have agreed with each other that it shall be so fixed.

28. The court erred in finding that it was conceded by the experts that the companies accurately and honestly kept their books, showing the facts set out in the findings of the court. The books of the companies did not show the facts set out in said findings, nor did the experts for the State concede that they did.

29. The court erred in finding (as stated in the opinion), that evidence in the case tended to show that a large number of men have been discharged from the service of the railroad companies by reason of the reduction of the rates. Not a reduction in rates, but a general depression in business and the want of business to keep the men employed, was the cause of their discharge.

30. The court erred in finding that the value of the complainant's franchise, included in the total valuation of its property as fixed by the State Board of Equalization, was so small a per cent of such total valuation as to make no appreciable difference in the result of the case.

On the contrary, the evidence shows that the value of the franchise was a substantial part of such total valuation.

31. The court erred in finding that if the value of complainant's franchise were altogether omitted from the value of its property, it could not have obtained from the operation of its property, or from the doing of the intrastate freight business, the return to
349 which it is entitled.

32. The court erred in finding that the complainant was entitled to a return upon the value of its franchise.

Wherefore, these defendants pray that the said amended final decree be reversed, and that said court may be directed to enter a de-

cree dismissing the complainant's bill, its amended and supplemental bill, and the amendment thereto.

ELLIOTT W. MAJOR,
Attorney General;
JOHN M. ATKINSON,
Assistant Attorney General;
SANFORD B. LADD,
Solicitors for Defendants John A. Knott, H. R. Oglesby and Frank A. Wightman, Railroad and Warehouse Commissioners, and Elliott W. Major, Attorney General of the State of Missouri.

350 Afterwards, to-wit, on the 6th day of March, 1911, Defendants' Petition for Appeal was filed. Said Petition for Appeal is in words and figures as follows:

351 In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 2997.

MISSOURI, KANSAS AND TEXAS RAILWAY COMPANY, Complainant,
v.
JOHN A. KNOTT, H. R. OGLESBY and FRANK A. WIGHTMAN, Railraid and Warehouse Commissioners; Elliott W. Major, Attorney General of the State of Missouri; C. W. McAninch, I. M. Danforth and A. L. Haggard, Judges of the County Court of Pettis County, Missouri; L. V. Ware, Treasurer of Pettis County, Missouri; C. C. Kelley and M. P. Belch, Prosecuting Attorneys of Pettis and Cole Counties, Missouri, Respectively; George West and M. Doherty; and John T. Heard and Elijah E. Johnson, Defendants.

The above named defendants, John A. Knott, H. R. Oglesby and Frank A. Wightman, Railroad and Warehouse Commissioners, and Elliott W. Major, Attorney General of the State of Missouri, conceiving themselves aggrieved by the decree rendered as of the 8th day of March, A. D. 1909, but signed and filed and entered on the 22nd day of March, A. D. 1909, as amended by the decree entered on the 17th day of April, A. A. 1909, in the above entitled cause do hereby appeal from said decree to the Supreme Court of the United States for the reasons specified in the assignment of errors which is filed herewith, and pray that this appeal may be allowed and that a transcript of the record, proceedings and papers upon which said decree was made, duly authenticated, may be sent to the Supreme Court of the United States.

And said defendants further show to the court that they have, in writing, notified the other defendants in said cause, to-wit: C. W. McAninch, I. H. Danforth and A. L. Haggard and William S. Sneed, Charles W. Knox and Milton Durrill as successors to said C. W. McAninch, I. M. Danforth and A. L. Haggard in the offices of

Judges of the County Court of Pettis County, Missouri; L. V. Ware, C. C. Kelley and William D. O'Bannon as successor of said C. C. Kelley in the office of Prosecuting Attorney of said Pettis County; M. P. Belch and Dudley F. Calfee as Successor of said M. P. Belch in the office of Prosecuting Attorney of Cole County, Missouri; George West, M. Doherty, John T. Heard and Elijah E. Johnson of their intention to present this petition for an appeal, and have, in writing, invited said other defendants to join with them in such petition for an appeal, and that all of said other defendants have, in writing, accepted service of said notices and invitations, and have, also in writing, severally declined to join in said petition for an appeal, which said notices and invitations, acceptances and declinations are now presented to the court and filed herewith.

ELLIOTT W. MAJOR,
Attorney General;
JOHN M. ATKINSON,
Assistant Attorney General;
SANFORD B. LADD,
Counsel for John A. Knott, H. R. Oglesby, and Frank A. Wightman, Railroad and Warehouse Commissioners, and Elliott W. Major, Attorney General of the State of Missouri.

Dated this 6th day of March, A. D. 1911.

The foregoing petition for appeal is allowed. Dated March 6th, 1911.

(Signed) SMITH McPHERSON, *Judge.*

352 Afterwards, to-wit, on the 6th day of March, 1911, a Bond for Appeal was approved and filed. Said Bond is in words and figures as follows, to-wit:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 2997.

MISSOURI, KANSAS AND TEXAS RAILWAY COMPANY, Complainant,
vs.
JOHN A. KNOTT, H. R. OGLESBY and FRANK A. WIGHTMAN, Railraid and Warehouse Commissioners; Elliott W. Major, Attorney General of the State of Missouri; C. W. McAninch, I. M. Danforth and A. L. Haggard, Judges of the County Court of Pettis County, Missouri; C. C. Kelley and M. P. Belch, Prosecuting Attorneys of Pettis and Cole Counties, Missouri, Respectively; George West and M. Doherty; and John T. Heard and Elijah E. Johnston, Defendants

Know all men by these presents: That we, John A. Knott, H. R. Oglesby, Frank A. Wightman and Elliott W. Major, as principals,

and J. W. Perry and W. H. Seeger, as sureties, are held and firmly bound unto the Missouri, Kansas and Texas Railway Company in the sum of One Thousand Dollars ($1000) to be paid unto the said Missouri, Kansas and Texas Railway Company, its successors or assigns, to which said payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally by these preents.

Sealed with our seals and dated this sixth day of March, A. D. 1911.

This obligation is upon this condition:

353 Whereas, the above named John A. Knott, H. R. Oglesby Frank A. Wightman and Elliott W. Major have prosecuted their appeal to the Supreme Court of the United States to reverse the decree rendered, and entered in the above entitled cause by the Circuit Court of the United States for the Western Division of the Western District of Missouri;

Now if the above named John A. Knott, H. R. Oglesby, Frank A. Wightman and Elliott W. Major, shall prosecute their said appeal to effect, and answer all costs if they shall fail to make good their plea, then this obligation to be void, otherwise to remain in full force and virtue.

JOHN A. KNOTT. [SEAL.]
H. R. OGLESBY. [SEAL.]
FRANK A. WIGHTMAN. [SEAL.]
J. W. PERRY. [SEAL.]
W. H. SEEGER. [SEAL.]
ELLIOTT W. MAJOR. [SEAL.]

The above bond is hereby approved and ordered to be filed and made a part of the record.

(Signed) SMITH McPHERSON, *Judge.*

354 Afterwards, to-wit, on the 6th day of March, 1911, the following Order Allowing Appeal to defendants was filed and entered of record:

355 In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 2997.

MISSOURI, KANSAS AND TEXAS RAILWAY COMPANY, Complainant,
v.
JOHN A. KNOTT, H. R. OGLESBY and FRANK A. WIGHTMAN, Railroad and Warehouse Commissioners; Elliott W. Major, Attorney General of the State of Missouri; C. W. McAninch, I. M. Danforth and A. L. Haggard, Judges of the County Court of Pettis County, Missouri; L. V. Ware, Treasurer of Pettis County, Missouri; C. C. Kelley and M. P. Belch, Prosecuting Attorneys of Pettis and Cole Counties, Missouri, respectively; George West and M Doherty, and John T. Heard and Elijah E. Johnston, Defendants.

Now at this day come the defendants, John A. Knott, H. R. Oglesby and Frank A. Wightman, Railroad and Warehouse Commissioners, and Elliott W. Major, Attorney General of the State of Missouri, and present their petition for an appeal to the Supreme Court of the United States from the final decree rendered herein, and also present an assignment of errors accompanying said petition, and at the same time make it appear to the satisfaction of the court that they have, in writing, notified the other defendants in this cause, that is to say, C. W. McAninch, I. M. Danforth and A. L. Haggard, and William S. Sneed, Charles W. Knox and Milton Durrill, as successors to said C. W. McAninch, I. M. Danforth and A. L. Haggard, in the offices of Judges of the County Court of Pettis County, Missouri; L. V. Ware, C. C. Kelley and William D. O'Bannon, as successor of said C. C. Kelley in the office of Prosecuting Attorney of said Pettis County; M. P. Belch and Dudley F. Calfee, as successor of said M. P. Belch, in the office of Prosecuting Attorney of Cole County, Missouri; George West, M. Doherty, John T. Heard and Elijah E. Johnston, of their (the said petitioners') intention to present said petition for an appeal, and have, also in writing, invited said other defendants to join with them, the said petitioners, in said petition for an appeal, and that all of said other defendants have, in writing, accepted service of said notices and invitations, and have, also in writing, severally declined to join in said petition for an appeal, which said notices, invitations, acceptances and declinations are now, by said petitioners, presented to the court; and it is thereupon ordered by the court that said petition for an appeal, said assignment of errors, said written notices, invitations, acceptances and declinations be filed and made a part of the record in this cause, and it is further ordered that the interests of the defendants so presenting said petition for an appeal be severed in said appeal from the interests of the said other defendants herein, and upon consideration of said petition, the court now allows the same, and to the said defendants, John A. Knott, H. R. Oglesby,

Frank A. Wightman and Elliott W. Major, an appeal to the Supreme Court of the United States from the final decree rendered in this cause in accordance with the prayer of said petition. And at the same time the said defendants present their bond for an appeal in the sum of One Thousand Dollars ($1,000) with J. W. Perry and W. H. Seeger, as sureties thereon, which said bond is now approved by the court, and it is ordered that a certified transcript of the record, testimony, exhibits, stipulations and all proceedings herein be transmitted to the said Supreme Court of the United States.

Dated Kansas City, Missouri, March 6, 1911.

(Signed) SMITH McPHERSON, *Judge.*

356 Afterwards, to-wit, on the 6th day of March, 1911, an assignment of errors was filed. Said assignment of errors is in words and figures as follows, to-wit:—

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 2997.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY, Complainant,
vs.
JOHN A. KNOTT, H. R. OGLESBY and FRANK A. WIGHTMAN, Railroad Commissioners, et al., Defendants.

Assignment of Errors.

Now comes complainant and respectfully shows that the court in the proceedings and decree in the above entitled cause committed manifest error in each of the following respects:

1. In rendering and entering that portion of paragraph 5 of the original and amended decree reading:

"It is further ordered, adjudged and decreed that the defendants, or any of them, when the circumstances have changed so that the rates fixed as aforesaid shall yield to complainant reasonable compensation for the services aforesaid, may apply to this court by supplemental bill or otherwise, as defendants or either of them may be advised, for further orders in their behalf."

2. In rendering and entering paragraph 6 of the amended final decree reading:

"The taxable costs of the case including those covered by orders of the court, heretofore made or hereafter made on motion to tax or retax, and including printing bill of Buxton-Skinner Sta-
357 tionery Company shall be paid as follows, to-wit: The one-half by complainant and the other half by defendants who are Railroad Commissioners and the Attorney General, to be recovered by execution to be issued by the clerk of this court upon application of any party in interest."

3. In not decreeing to be regulation of commerce among the states and invalid, of no force, and contrary to the provisions of section 8, article 1, of the constitution of the United States, each of the acts of the legislature of Missouri mentioned in paragraph 2 of the amended final decree; the purpose of this assignment being to make it a separate assignment of error as to each of said acts, the same as if it were separately written out and applied to each act.

4. In not decreeing that the rights, privileges and immunities of complainant were abridged, that complainant was denied the equal protection of the law and deprived of its property without due process of law, all contrary to the provisions of the fourteenth amendment to the constitution of the United States, by the state making and enforcing each of the legislative acts mentioned in paragraph 2 of the amended final decree; the purpose and intent hereof being to separately assign this error as to each one of said acts the same as if so separately written.

5. In holding that neither the freight act approved March 19, 1907, nor that approved April 14, 1905, nor that approved April 15, 1905, nor the passenger act approved February 27, 1907, nor the enforcement of either of them, directly affected interstate commerce.

6. In holding that neither the freight act approved March 19, 1907, nor that approved April 14, 1905, nor that approved April 15, 1905, nor the passenger act approved February 27, 1907, was discriminatory against complainant, or, as to it, violative of the fourteenth amendment to the constitution of the United States when
358 the act was upon its face general in its terms, applicable to all companies in the state, and the findings show that it is confiscatory as to each of the other companies in the state and as to complainant's competitors.

7. In holding that the passenger act approved February 27, 1907, was upon its face valid, whereas it was discriminatory and unreasonably classified companies according to mileage and according to ownership, control and occupation so that all roads in the state were arbitrarily required to charge two cents per mile, except those of less than forty-five miles in length, which were permitted to charge four cents per mile, provided they were not owned, leased, controlled or occupied by any trunk line, company or corporation.

8. In holding that the passenger act approved February 27, 1907, was on its face valid, when it was discriminatory and unreasonable, and classified the fares to be charged by providing half fare for children.

9. In holding to be valid upon its face the freight act approved April 15, 1905, whereas it was discriminatory and unreasonable in that it fixed rates to be charged by any individual or railway company, owning, operating, managing and leasing a railroad but applied the penalties only to railway companies or corporations.

10. In not decreeing to be void each of the acts of the legislature of Missouri mentioned in paragraph 2 of the amended final decree, for that the penalties were so enormous, unreasonable and severe as to be an attempt to coerce complainant to put them in and prevent it from having a judicial inquiry and review; all contrary to the

fourteenth amendment to the constitution of the United States; the purpose being to make this a separate assignment as to each of said acts the same as if they were separately written out and applied thereto.

For all of which reasons the decree and holding of the
359 Circuit Court in such regard should be reversed.

FRANK HAGERMAN,
Solicitor for Complainant.

360 And on the 6th day of March, 1911, a petition for cross appeal was filed. Said petition for cross appeal is in words and figures as follows, to-wit:—

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 2997.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY, Complainant,
vs.
JOHN A. KNOTT, H. R. OGLESBY and FRANK A. WIGHTMAN, Railroad Commissioners, et al., Defendants.

The above named complainant, conceiving itself aggrieved by the decree rendered and entered on March 22, 1909, as of March 8, 1909, as amended by the decree rendered and entered on April 17, 1909, at the November, 1908, term of court in the above entitled cause, does hereby apply for an appeal, and does appeal from such decree to the Supreme Court of the United States for the reasons specified in the assignment of errors filed herewith, and prays that this appeal may be allowed as a cross-appeal, and such steps taken to perfect the same as may be required by law, an appeal having already been prosecuted for the decree, and a transcript taken by the attorney general and railroad and warehouse commissioners, defendants in the cause.

FRANK HAGERMAN,
Solicitor for Complainant.

The foregoing petition for appeal is presented and allowed this March 6, 1911, by the undersigned, Judge who rendered the decree appealed from.

(Signed) SMITH McPHERSON, *Judge.*

361 Afterwards, to-wit, on the 6th day of March, 1911, a bond for cross appeal was approved and filed. Said bond is in words and figures as follows, to-wit:—

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 2997.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY, Complainant,
vs.
JOHN A. KNOTT, H. R. OGLESBY and FRANK A. WIGHTMAN, Railroad Commissioners, et al., Defendants.

Bond.

Know all men by these presents that the Missouri, Kansas & Texas Railway Company, as principal, and E. E. Ball, as surety, are held and firmly bound unto the above named defendants in the full and just sum of two hundred and fifty dollars to be paid to said defendants, their heirs, executors, administrators or assigns, for which payment well and truly to be made, we bind ourselves, our successors, heirs, executors and administrators, jointly and severally by these presents.

Dated this March 6, 1911.

Whereas lately, at the November, 1908, term of the above named court, in the above entitled cause, a decree was rendered against said complainant, which has obtained a cross appeal to reverse the action of the court in the aforesaid suit and a citation directed to the said defendants citing and admonishing them to be and appear in the Supreme Court of the United States at the city of Wash-
362 ington, District of Columbia, thirty days from and after the date of the said citation,

Now the condition of the above obligation is such that if the said cross appellant and complainant above named shall prosecute said cross appeal to effect, and answer all damages and costs if it fail to make good its appeal, then the above obligation to be void; otherwise to remain in full force and virtue.

MISSOURI, KANSAS & TEXAS RAILWAY CO.,
Principal,
By FRANK HAGERMAN,
Agent and Attorney;
E. E. BALL, *Surety.*

The above bond is hereby approved and ordered to be filed and made a part of the record this March 6, 1911.

(Signed) SMITH McPHERSON, *Judge.*

363 And on the 6th day of March, 1911, the following order allowing cross appeal was filed and entered of record, to-wit:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 2997.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY, Complainant,
vs.
JOHN A. KNOTT, H. R. OGLESBY and FRANK A. WIGHTMAN, Railroad Commissioners, et al., Defendants.

Order.

This cause coming on for hearing this March 6, 1911, upon the application for an appeal by the complainant, together with its assignment of errors, an appeal is hereby allowed and bond for appeal is hereby fixed in the sum of two hundred and fifty dollars.

Inasmuch as this is a cross appeal, the clerk is directed to forward a transcript of all proceedings in the cause since the preparation and filing of a transcript of the record in the appeal taken by the defendants.

(Signed) SMITH McPHERSON, *Judge.*

364 Afterwards, to-wit, on the 31st day of March, 1911, the following Order was filed and entered of record:—

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 2997.

MISSOURI, KANSAS AND TEXAS RAILWAY COMPANY, Complainant,
vs.
JOHN A. KNOTT et al., Defendants.

For good cause shown, that is, because the Clerk of said Circuit Court is unable to prepare a transcript of the record herein within thirty days from the date of the day of signing the citation herein it is

Ordered that the time for filing said record with the Clerk of the Supreme Court be, and the same is hereby, enlarged; and it is

Ordered that said record may be filed with the Clerk of the Supreme Court on or before the first day of August, 1911.

(Signed) SMITH McPHERSON, *Judge.*

Dated Kansas City, Mo., March 31, 1911.

365 Afterwards, to-wit, on the 13th day of April, 1911, a Stipulation was filed. Said Stipulation is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 2997.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY, Complainant,
vs.
JOHN A. KNOTT et al., Defendants.

Whereas, John A. Knott, H. R. Oglesby and Frank A. Wightman, Railroad and Warehouse Commissioners, and Elliott W. Major, Attorney General of the State of Missouri, defendants in the above entitled cause, have been allowed an appeal therein to the Supreme Court of the United States.

And, whereas, the said Missouri, Kansas & Texas Railway Company, complainant, has been allowed a cross-appeal herein to the Supreme Court of the United States.

And, Whereas, the said Railroad and Warehouse Commissioners and said Attorney General were, by said circuit court, allowed an appeal, and the Chicago, Burlington and Quincy Railroad Company was allowed a cross-appeal to the Supreme Court of the United States from a decree rendered by said circuit Court in a cause then pending in said Circuit Court of the United States, wherein said Chicago, Burlington and Quincy Railroad Company was complainant, and said Railroad and Warehouse Commissioners and said Attorney General and others were defendants.

And, Whereas, the evidence offered, taken, and received in the said circuit court in the above entitled cause is included in the transcript and printed record in said cause wherein the said Chicago, Burlington and Quincy Railroad Company was complainant.

And, Whereas, all of said evidence was for the purpose of the hearing in said Supreme Court of the United States of the said appeal and cross-appeal in said cause wherein the said Chicago, Burlington and Quincy Railroad Company was complainant, printed, under the direction of the clerk of the Supreme Court of the United States, and is contained in five printed volumes now in file in the office of the clerk of said Supreme Court in the cause therein pending, numbered 21821, wherein John A. Knott and others are appellants and the Chicago, Burlington and Quincy Railroad Company is appellee, and numbered 21837, wherein the Chicago, Burlington and Quincy Railroad Company is appellant and John A. Knott and others are appellees.

Now, Therefore, in order to save the parties hereto the useless expense which would be incurred in the preparation of a complete transcript of the record and the evidence in the above entitled cause, it is stipulated and agreed between the parties hereto that upon the hearing in the said Supreme Court of the appeal and the cross-appeal in the above entitled cause, the evidence contained in said five printed volumes shall be taken and regarded as the evidence in the above entitled cause with the same effect as if it had been written out and

certified in this cause by the clerk of the circuit court, and that the evidence contained in said five printed volumes, supplemented
366 by a transcript of all the pleadings, papers, decrees and orders peculiar to the above entitled cause, shall be taken and regarded in said Supreme Court as a complete transcript of the record and proceedings in the above entitled cause, and that it shall not be necessary for the clerk of the circuit court to include in the transcript prepared by said clerk any evidence contained in said five printed volumes.

ELLIOTT W. MAJOR,
Attorney General.
Solicitor for John A. Knott et al., Appellants.
FRANK HAGERMAN,
Solicitor for M., K. & T. Ry. Co., Appellee.
FRANK HAGERMAN,
Solicitor for M., K. & T. Ry. Co., Cross-Appellant.
ELLIOTT W. MAJOR,
Attorney General,
Solicitor for John A. Knott et al., Cross-Appellees.

367 The Opinion filed herein on the 14th day of June, 1907, is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 3000.

THE WABASH RAILWAY COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendants.

And Seventeen Other Like Cases.

Remarks of Judge Smith McPherson, at Two O'clock P. M., June 14th, 1907.

Here are 18 cases, in which all the railways of the State ask to file supplemental bills in equity in the 18 cases, brought two years ago against the State officers to enjoin the enforcement of statutes of 1905 fixing rates. The charge was made that the rates were not remunerative but confiscatory, and therefore void by reason of the United States Constitution. Those cases were placed at issue and referred to a master. The evidence has been taken and the court is now advised that within a month or two the cases will be argued to the Master. So that after six months or more from now a final decree will be entered in this court. I do not speak of this delay in a spirit of complaint, or even criticism. I simply state the fact of delay. During the early part of this year the legislature of Missouri repealed part of the rate laws of 1905 complained of, enacted sub-

stitutes therefor and placed still other commodities under specific tariff rates, including passenger rates of two cents per mile.

Early in this week notices were given of an application to file supplementary bills, attacking the rates fixed in 1907, on the ground that such rates were confiscatory.

That this is a judicial question all informed people agree. That it is a question of gravity and almost supreme importance all recognize and by none more than by the courts. It involves the question of what are reasonable rates and how determined. It in-
368 volves the question of whether all the receipts for State business can be taken in their entirety, and if in the aggregate remunerative *of* whether the laws are valid. And it involves the question as to whether every person is entitled to have his product carried at reasonable rates instead of carrying some at unreasonable low rates and others at unreasonably high rates, and allowing the law to stand because the average is remunerative. And it involves the question of whether the State of Missouri is attempting to exercise the powers solely lodged in the Congress of the United States. And there may or may not be involved the question of which is the more powerful with reference to these rates, the nation or the state.

I express no opinion as to some of these questions, on some of which I have a conviction and on others I do not even have a tentative opinion. But they are all judicial questions, and for the courts only, and in the end will be decided by the Supreme Court of the United States, a court in which every patriotic person has unbounded confidence. To that Court these questions in the end will go for decision.

As to whether these supplemental bills may be filed was set down for argument this morning at the opening of court. These rate statutes presumptively are valid, and if valid went into effect at midnight last night. Seeing the gravity of the situation, this court on yesterday, on its own motion, on inspecting the proposed supplemental bills, entered a restraining order, restraining the railways from carrying out the recent statute until the matters could be heard, as to filing the supplemental bills on which, if filed, a temporary injunction should issue. At the morning hour of this day, the Assistant Attorney General of the State appeared and stated that the Attorney General could not be here until to-morrow morning. It was also at that time made to appear that on the morning of this day suits were filed in the state courts at St. Louis and Kansas City, and a temporary mandatory injunction had been issued by the state courts, commanding the railways to recognize as valid and carry out the statute of 1907.

369 All courts, state and federal, recognize the delicacy of real or seeming conflicts between the courts. All courts recognize that all other courts act in good faith. And this court appreciates the situation. It is a question worthy of argument and deliberation.

When the foregoing situation was disclosed this morning counsel for the railways moved for a continuance for a week or ten days, to the end that the situation might be looked into. This motion will be overruled, and all these matters are set down for hearing at two

o'clock to-morrow afternoon. These delays cannot be allowed. The interests of the public and the railways alike demand the speedy determination of all questions connected with the foregoing statements as well as all questions connected with the validity or invalidity of the rate statute recently enacted by the state legislature of Missouri. At the time named I shall expect counsel on both sides to be ready to proceed in argument, as well as to move for such other proceedings as may be deemed proper. All of which is so ordered.

370 On the 17th day of June, 1907, an Opinion was filed. Said Opinion is in words and figures as follows:

In the Circuit Court of the United States, Western District of Missouri, at Kansas City.

THE WABASH RAILWAY COMPANY
vs.
HERBERT S. HADLEY, Attorney General, and THE STATE RAILROAD COMMISSIONERS.

And Seventeen Other Like Cases.

Remarks of Judge Smith McPherson, Monday, June 17, 1907.

These cases were argued on Saturday and taken under advisement until this time. The situation is such that I must decide the questions today. Limited as the time has been, I have an abiding conviction of what should be done even if the reasons therefor may not be stated with the fullness that the importance of the matters requires. I have been much aided by the arguments, which were strong, eloquent and powerful, by counsel representing both sides, and as it seems to me, every phase of the questions was so illuminated by the arguments that all possible questions are at on end of debate.

The real question here is, has this court jurisdiction over the passenger fare law of 1907 of the Missouri Legislature by which it is declared that the legal fare be two cents per mile. A question connected with that is, whether the bills tendered are supplemental bills to those filed in the eighteen cases two years ago to enjoin the enforcement of the freight tariff law of 1905 now pending before the Master.

A supplemental bill usually is where there has been some change in the rights or status of the parties which must be carried forward by a supplemental bill. And usually when a supplemental bill is thus allowed, matters can be brought in which could have been covered by an amendment to the original bill. These discussions as to supplemental bills, as well as to other bills, are exceedingly technical. It seems to me that the test is not so much in the way of pleading is styled, as what the allegations of the pleading are. For-
371 merly, discussions as to various bills in equity gave rise to great delay, the results being that years and years would elapse before a chancery case could be concluded. Looking back

at those old discussions, it now seems to have been a folly to thus waste the time and energies of the judges and of counsel in determining these technical questions. Such must have been the belief of the Supreme Court when a code of Rules in Equity were established, the purpose no doubt being to get rid of the old technicalities which served no useful purpose. By the adoption of the Rules in Equity, we have a system of fact pleading, covering almost every phase of equity pleading and practice; and it is only when some question of practice is not covered by the rules, that we go back to see what the practice of the High Court of Chancery in England was, and then not as positive rules, but as furnishing just analogies. Rule 90 thus providing was adopted in the year 1842, and the Supreme Court has decided that when we go to the English Chancery practice, we must take the practice as it existed in England in 1842, when this rule was adopted. By Rule 57 it will be seen that the supplemental bill is allowed when any material event has happened after the filing of the original bill. In 1905 the Legislature of Missouri enacted a maximum freight tariff statute as to several commodities. The railways contested the validity of that statute in the eighteen actions above referred to, and these actions are still pending. By the act of 1907 the Legislature declared that all railways should charge but two cents per mile per passenger. It seems to me that this is an event happening since the institution of the original suits, and an event that is germane to the original controverted questions.

But I do not deem it of much importance to determine whether the pleadings tendered for filing are supplemental bills, or whether they are original bills.

On Tuesday, the 11th inst., the complainants gave notice of filing these bills on Friday, the 14th inst. On Thursday, the 13th inst., the railway companies asked leave to file them. Solely out
372 of courtesy to the Attorney General, who was not then present, this was refused, but the Court on its own motion issued restraining orders to keep the matters in status quo. At the time fixed, Friday the 14th inst., the matter was again delayed for a day at the request of the Attorney General, he still being absent. And on that day bills were filed in the state courts at Saint Louis and Kansas City, the purpose being, as it is said, to bring about the enforcement of this statute in question. And the argument now is, that as these cases were filed in the state courts on Friday the 14th inst., the day before the arguments were had in this court, and that the same subject matter was pending in the State courts, and that the state courts would take jurisdiction to the exclusion of this court, the cases being there first pending. But the above statement of facts shows that the cases were pending in this court from Tuesday the 11th inst., and that orders were made on Thursday the 13th inst., the day before the cases were lodged in the state courts. If these matters could not be covered by supplemental, they could be covered by original bills, and they were presented prior to the institution of the cases in the state courts. It is not material whether these supplemental bills so-called are full and complete as original bills. Defects could be cured upon exceptions or demurrers, or by complain-

ants on their own motion before the filing of an answer. Nor is it material whether these pleadings are filed in the original cases or separately docketed; because if separately docketed, they will at once for trial purposes be consolidated with the old cases pursuant to Section 921 of the Revised Statutes. And whether the contention of counsel for the state officers be technically correct or not, the contention is without substantial merit as to the rights of the parties. These pleadings should be filed and regarded as having been filed on Tuesday, the 11th inst.

The fixing of rates by the Legislature is presumptively correct and the Railway Companies have the burden of proof of showing that the statute is not remunerative. That the fixing of rates is a legislative act, all agree. But that such rates must be reasonably remunerative, cannot longer be discussed. The railways are enti-
373 tled to cost and a reasonable profit, and no fair-minded man disputes it. How to arrive at the cost and a reasonable profit, is a most difficult problem. But if the statute is challenged, it must be ascertained, and this ascertainment can only be by judicial proceedings, and must be determined by the courts, and ultimately by the Supreme Court of the United States. No skill of the draughtsman by the use of words or phrasing can take this question from the courts. It can never be settled in a criminal case by arresting ticket agents and conductors. The Supreme Court in the end must have the evidence with the right to make the ultimate findings of fact. There is but one orderly and seemly way, and that is in equity with the right of appeal to the Supreme Court, as has been said by that court over and over again. All contentions that the courts of the state can decide these questions as well as can the United States Courts, is not a question for argument, because it is a question of jurisdiction, and in my judgment, in these cases this court has jurisdiction, and having jurisdiction, the jurisdiction should be exercised.

There seems to be much feeling in the minds of many as to where these cases should be adjudicated, but why the feeling I do not understand. And yet I recall the historical facts that at various times since the organization of this government, the feeling has run high as to whether the federal or state courts should adjudicate matters of importance to the public. No one doubts that the states have a right to manage their own local affairs, and to have matters growing out of their own local affairs determined by their own courts. But it is too late to seriously complain because the United States Courts take and exercise jurisdiction under the constitutional provision providing for the courts, and the enactments thereunder. The United States Courts, regardless of the citizenship of the parties, will take and exercise jurisdiction in actions of a civil nature when the provisions of the United States Constitution are invoked, as has been done in this case. The Constitution provides for this, and Congress has provided the procedure. The Commerce Clause of the United States Constitution has been invoked, as is the Fourteenth Amendment. These are national questions, and the Supreme Court
374 will hold the scales of justice with the evidence before it, and why there should be any excitement or feeling about this,

is beyond my comprehension. I do not know, and of course do not state, that the State Legislature has wronged these railways, because that is the question to be decided when deciding the merits of the case. The railways say that they are being wronged, and they should have a hearing, and the hearing should be on the evidence, and that evidence carried in the record to the Supreme Court. And if upon the evidence the railways are being compelled to transact business at a loss, no one ought to doubt but that the Supreme Court will hold the statute void. If the rates fixed are remunerative, no one ought to doubt but that the statute will be upheld. It is too late to talk about the alleged wrongs of the Supreme Court declaring statutes void. That question was fought out one hundred years ago. and from the organization of the Supreme Court down to the year 1888, being the period covering the first one hundred years of the United States Supreme Court, that court held twenty United States Statutes void. During the same period that court held one hundred and eighty-one state statutes void, of which fourteen were Missouri statutes. (See Appendix to Volume 131 U. S. Reports.) How many statutes have since been declared void by that court, I have not taken the time to ascertain. Some of the statutes thus declared void were railway rate statutes enacted by the states.

These questions are of the greatest importance. There are many complications arising. Much is to be considered besides the mere rates or fares. There must be equality of rates, the treatment and charging of all alike. No rebates; no discriminations must be allowed. Safety of the public, including passengers and employés, must be considered. And as of much importance as any other question, if not the greatest of all, is the question of efficient service. Rapid and prompt delivery of freight must be had. Fast passenger trains with but few stops, for passengers going a considerable distance, are demanded. Local trains for local passengers, are required. To have such efficient service, reasonable compensation must be paid. All these questions are involved in the fixing of rates. Between the cities of Saint Louis and Saint Joseph, one line of railway is wholly within the state, while another and competing line a part of the distance is within the state of Kansas. A like situation exists
375 between Kansas City and Saint Joseph, and another like situation exists between Kansas City and Joplin. Possibly there are other like situations. In the case of Hanley vs. R. R., 187 U. S., the Supreme Court decided that a railway connecting two points within the state, and doing business between the two points, but with a line outside of the state a part of the distance, was engaged in interstate commerce controllable only by enactments of Congress. What about the Missouri statute fixing rates over the one line wholly within the state as against a competing line a part of the distance outside of the state? I do not intimate the conclusion, but that there is a question, can not be doubted. And if the statute is void in part, is it separable, leaving the valid parts to stand with the void parts eliminated? I simply mention these questions to show the gravity and importance of these cases without in the slightest degree intimating the conclusion, often discussed by men of great ability, but upon

which as yet there has been no conclusion reached, so far as I know, by any of the courts.

It is urged with such plausibility that by reason of the case of Fitts vs. McGhee, 172 U. S., that because penalties are affixed to the Statute of 1907, that the criminal courts of the state only can take jurisdiction. I do not stop to review the various Missouri Statutes upon the subject of both passengers and freight, all of which must be considered as in pari materia; but it is sufficient to say that the inflicting of penalties is not the only remedy. The Attorney General and Railroad Commissioners still have much to do with the enforcement of these statutes which the railways contend are void in part. These matters were considered, and a conclusion reached adversely to the contention of the officers of Missouri, by the Supreme Court of the United States, sustaining Judge Philips when presiding in this court, and reversing the Supreme Court of Missouri. R. R. vs. Missouri R. R. Commissioners, 183 U. S. 53. As I understand in the original eighteen cases now pending in this court, the question was and is, whether all the earnings in the aggregate are remunerative. That theory being, I suppose, by reason of the case of Smythe vs. Ames, decided by the Supreme Court, and the question is
376 still present under the General Statutes of Missouri, the Statutes of 1905, and the Statute of 1907 in question. The time is not far distant when the question will be raised, and possibly in these very cases, as to whether the statutes can stand, if some rates are too high, if the rates within the state in the aggregate are remunerative. The question will arise whether one person can have less than reasonable rates, and another be compelled to pay more than reasonable rates. Will it be a sufficient answer to say that in the aggregate the rates are remunerative? Or is that a question only between the individual and the railway company? Upon this question I intimate no ruling, but the importance of the question can not be overestimated.

These cases will be set down for hearing. The orders heretofore made will stand except as now modified. The two cent passenger fare statute should be put in force, and kept in force for some months with the rights of the railways later on to renew their motions to enjoin the enforcement of the statute. One class of people claim that with the two cent fare travel will so increase as to make it remunerative. Others deny this. The Wisconsin Commission but lately declared, after months of investigation, that in that state a two cent passenger fare would be confiscatory. Governor Hughes, by a recent veto message, so declared as against an enactment providing for the two cent fare in the populous state of New York. It may be that what will be reasonable rates in parts of Missouri on one line, will be unreasonable in another part of Missouri on another line. How can these questions be determined? Is it not at present all speculation and guesswork? Of what value will be the testimony of an ordinary business man testifying by way of opinion? And of what value will be the testimony of railway experts giving opinion and illustrating his opinions by the use of many figures? Experience over a reasonable period of time ought to, and no doubt will, settle these questions,

at least for the time being, although what may be a reasonable remuneration one year, may be unremunerative five years hence. The Supreme Court of the United States in Smythe vs. Ames, referred to, took care of that question by keeping it open with the right to open up the case from time to time as circumstances required.

377 Therefore the orders will be that this court retains jurisdiction of these cases regardless of whether the pleadings tendered are considered as supplemental bills or original bills, and no order will be made for some months with reference to the two cent fare statute, leaving it for the time being operative and as though in full force.

378 On the 17th day of June, 1907, an Opinion was filed. Said Opinion is in words and figures as follows:—

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

THE WABASH RAILWAY COMPANY
vs.
HERBERT S. HADLEY, Attorney General, and Other State Officers

And Seventeen Other Like Cases.

Remarks of Judge Smith McPherson, June 17th, 1907.

The real question here is, has this court jurisdiction over the passenger fare law of 1907 of the Missouri legislature declaring it unlawful to charge more than two cents per mile? A lesser question is whether the bills tendered for filing are supplemental bills to those filed in this court in the eighteen cases two years ago and now pending before Mr. Schofield, the Master.

I fully appreciate the responsibility resting upon me and the consequences to follow from the orders now to be made. If mistaken the mistakes are mine, even though I have had but part of one day since the argument to reach these conclusions. Never has a case before me been argued with greater eloquence, logic and power than was done by counsel both for the state officers and for the eighteen railways. Every phase of the case direct and collateral has been so illuminated that all possible questions are at the end of debate. What is the supplemental bill in equity? And wherein is the importance of defining it? Usually it is where there has been some change in the rights of the parties, which must be carried forward by a supplemental bill. One hundred and more years ago judges who had but little to do except play the role of mental acrobats and seek to refine and distinguish and to display an affected learn-

379 ing, and to discuss most gravely "the difference betwixt the west and northwest side of a hair" most elaborately set forth their views, as to original bills and amended bills and supplemental bills, and bills of review, and bills in the nature of bills of review,

The result was that a chancery case lasted for many years. More than fifty years ago the Supreme Court recognized the folly of much of this, and by a code of rules adopted the system of fact pleading and left the old chancery practice in force only when the 94 rules adopted did not meet the situation that might arise, and by rule 57 defined a supplemental bill. But that is not important in my judgment. Whether this proceeding should be by original bill, or by supplemental bill is of small consequence. If by original bill, the railways had the right to file the same without notice, and the right to a restraining order without notice. If by supplemental bill the practice is to require notice. And in either case it is discretionary with the judge to allow a restraining order without notice until a hearing can be had on notice as to a temporary injunction. On Tuesday the 11th instant, the complainants gave notice of filing these bills on Friday the 14th instant. On Thursday they asked to file them. Solely out of courtesy to the Attorney General, who was not present, this was refused; but the court on its own motion issued the restraining order, to keep the matter in statu quo. At the time fixed for the hearing the matter was again delayed for a day at the request of the Attorney General, he unavoidably being absent. During that delay the bills were filed in the State courts. For this there is no criticism. But I have stated the facts, and the statement of facts shows that these cases, as to the laws of 1907, were pending and had been pending since Tuesday the 11th instant. And these bills must be considered as filed as of that date. And whether defective as original bills is not material, because such defects can be corrected on demurrer or exceptions, or by the complainant before answer as of course. Nor is it material whether filed in the original cases or separately docketed. If separately docketed, they will at once for trial purposes be consolidated with the old cases, pursuant to Section 921 of the Revised Statutes. If the contention of counsel for
380 the state officers be technically correct, it is without substantial merit as to the rights of the parties.

That the fixing of rates by the legislature is presumptively correct, all concede. That it is a legislative act, all agree. But that such rates must be reasonably remunerative, cannot longer be discussed. The railways are entitled to cost and a reasonable profit, and no fair minded man disputes it. How to arrive at the cost and reasonable profit is a most difficult problem. But it must be ascertained and this ascertainment can only be by judicial proceedings, and to be determined only by the courts and ultimately by the Supreme Court of the United States. No skill of the draftsman by the use of words or phrasing can take that from the courts to the town meeting. It cannot be changed by declamation, either sophomoric or by invective. It can never be settled in a criminal case by arresting ticket agents or conductors. The Supreme Court in the end must have the evidence, with the right to make the ultimate findings of fact. No local tribunal, Federal or State, can foreclose the fact as would be done if the case goes to the Supreme Court on writ of error to the State courts, and from the State courts there is no method of review but by writ of error. There is but one orderly and seemly way, and that is in

equity, with the right of appeal to the Supreme Court as has been said by that court over and over again. The argument that the courts of the State can decide as to the validity of the laws of the State as well as can the United States courts will not be argued by any Federal judge, but will be conceded. Those courts are as high minded and as learned as are the Federal courts, but that is not the question. It is a question of jurisdiction. And this court has jurisdiction and will maintain its jurisdiction. Nor is this to the prejudice of anyone. As I listened on Saturday to the argument, I was carried back to the days of 1801-9. I recalled the judicial revolutions of Virginia and Pennsylvania. I recalled the case of Luther v. Bor-
den, growing out of the Dorr rebellion. I recalled the bitter-
381 ness of half a century ago between Iowa and Missouri over the State line. I recalled the recent Lives of Thomas H. Benton and Gouverner Morris by a distingushed author who states that at one time or another every one of the original thirteen states has tried in some form or other to destroy this government. And I recalled that in every instance, save the troubles of 1861-5, that the United States Courts have, in a dignified way, settled the disputes and law-abiding people acquiesced and the lawless element were compelled to submit.

That the States have the right to manage their own local affairs will ever be maintained. But it is too late to talk about states dictating to the Government, or to riding down its courts. This is a Nation. Its commerce will not be interfered with by any State, because for that almost alone we adopted our Constitution. The Commerce Clause will always be upheld, and the rights of the citizen, including corporations, will ever be protected in their just rights under the Fourteenth Amendment. These are National questions, and the Supreme Court will hold the scales of justice with the evidence before them. I do not know and of course do not state that the State legislature has wronged these railways. That is the case on its merits. But the railways say they are being wronged, and they must have a hearing, and a hearing on the evidence, and that evidence carried with the record to the Supreme Court. And if upon the evidence they are being compelled to transact business at a loss, no one need doubt but that the Supreme Court will nullify the statute. If the rates fixed are remunerative, the statutes will be upheld. It is too late to talk about the alleged wrongs of the Supreme Court declaring statutes void. That was fought out one hundred years ago. Down to 1888 the period covering the first 100 years of the United States Supreme Court, that court held twenty United States statutes void. During the same period that court declared as void 181 state statutes, of which 14 were Missouri statutes. (See Appendix to Vol. 131 U. S. Rep.) How many have since been declared void I have not
taken the time to ascertain. And some of the statutes thus
382 declared void were railway rate statutes, enacted by the states.

It must be remembered that in passenger and freight carrying there is much to be considered besides rates or fares. Important as any, if not the most important, is the equality of rates; the treatment and charging of all alike. No rebates; no discriminations, must be

allowed. Safety of the public, includingg passengers, and employés, must be considered. And of as much importance as any other question is efficient service. Rapid and prompt delivery of freight must be had. Fast passenger trains, with but few stops, for passengers going a considerable distance, is demanded. Local trains for local business is required. To have these reasonable compensation must be paid. So that these questions are all involved. And in consequence such business as is between St. Louis and St. Joseph, Kansas City and St. Joseph, Kansas City and Joplin, and perhaps other points, where parts of the routes of some of the lines are out of the State, a grave question is presented, and no small question is covered whether parts of these statutes are void that the matter can be separated and the balance of the statute remain in force, because Congress, even as to those lines wholly within the state, may or may not have control of such commerce when it directly interferes with commerce passing out of and back into the state. I neither pass upon this question nor express an opinion thereon, because while such questions have frequently been discussed by the ablest of men, such questions have not yet been decided. I simply mention it as a great National question.

It is urged with much plausibility that because penalties are affixed to the statutes of 1907 that the criminal courts of the state only take jurisdiction. I do not stop to review the various Missouri statutes upon the subject of both passengers and freight, all of which must be construed as in pari materia. But it is sufficient to say that the inflicting of penalties is not the only remedy. The Attorney General and Railroad Commissioners still have much to do with the enforcement of these statutes, which the railways contend are void in part. In the original cases the question was whether all the earnings in the aggregate were remunerative. That question is still
383 present under the statutes of 1907. Whether these laws by raising the freight rates and lowering the passenger fares are remunerative in the aggregate must be considered by the court. The State is not in effect a party, because the charge is that these officers are seeking to enforce void statutes, in more ways than by inflicting penalties.

The orders heretofore made will stand until vacated or modified. The cases will be set down for hearing as to whether a temporary injunction shall issue? and if issued what shall be the scope? Shall they restrain the enforcement of the recent freight rate statute? Shall they restrain the enforcement of the recent two cent passenger rate statute? Tentatively, subject to argument, and subject to change of opinion, if I should hear the cases, my present view is that the two cent passenger fare statutes should be put in force and kept in force for some months at least, with the right of the railways later on to renew their motions to enjoin the enforcement of the statute. One class of people claim that with a two cent fare travel will so increase as to make it remunerative. Others deny this. The Wisconsin Commission but lately declared after months of investigation that in that State a two cent fare would be confiscatory; and Gov. Hughes by a recent veto message so declared in the populous state of New

York. How is this question to be determined? Is it not all speculation and guess work? Of what value will be the testimony of an ordinary business man? And of what value will be the testimony of railway experts?

Such are my present views, hurriedly stated and without time to place them in the shape of a formal opinion. Nor would it be of substantial benefit to anyone to review the many authorities. They are known to the profession and to the courts. But I have stated what the law is as I understand it to be.

384 On the 31st day af March, 1908, an Opinion was filed. Said Opinion is in words and figures as follows:

In the Circuit Court of the United States, in the Western District of Missouri.

No. 2988.

THE SAINT LOUIS & SAN FRANCISCO RAILROAD COMPANY, Complainant,

vs.

HERBERT S. HADLEY, Attorney General, and Others, Defendants.

And Seventeen Other Like Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3004, 3005, 3006.

Frank Hagerman and others for Complainants.
Herbert S. Hadley, Attorney General,
John Kennish, Assistant Attorney General,
F. W. Lehmann and S. B. Ladd, for Defendants.

Opinion.

SMITH MCPHERSON, *Judge:*

Here are eighteen cases, brought by as many railway companies of the state, against the Attorney General, Railroad Commissioners of the State, County Judges, County Treasurer and shippers.

The purpose of the bill in each case, is to enjoin the enforcement of state railway rate statutes on the ground that the rates thus fixed by legislative enactment, are not remunerative, but are confiscatory. The original bill of complaint in each case was filed in 1905 assailing an Act approved April 15, 1905 fixing rates. In June of that year temporary injunctions were issued. In December of that year answers were filed, and on defendant's motion the cases were referred to a Special Master before whom the cases are still pending.

That statute was enacted in lieu of certain sections of the Revised Statutes of the State.

In 1907 the Legislature enacted a statute which was approved March 19, 1907. This statute after referring to the one of 1905, declared that the same

385 "be and hereby are repealed, and the following to be known as sections 1194, 1194*a*-1, 1194*b*-1, and 1194*c*-1 of said Revised Statutes, are enacted in lieu thereof."

Then follow four sections designated as above.

By still another statute passenger fares were fixed at two cents per mile, theretofore three cents per mile.

In June 1907 each company filed another bill, concerning which see the opinion by this Court in this case in 155 Federal Reporter 220. Since that time the cases have been pending before the Master, the delay occasioned in part at least by an awaiting of a decision of the Supreme Court in what are known as the Minnesota and North Carolina cases. This Court declined to grant a temporary injunction as to the passenger rates, but granted such writ as to the freight rates. Both statutes of 1907 provide for penalties for a violation of the enactment, and expressly recite that any liability or penalty incurred under the statute of 1905 may still be enforced. It is now claimed that the original cases are at an end because the statute of 1905 has been repealed. The Court cannot so hold. As has been noticed for the statute when repealed, there was a substitute enacted. One rate was cut out and another fixed, with the penalties under the prior statute remaining. This does not overthrow the original cases. They are rightfully pending with part of the subject matter still in existence, and a new alleged grievance in place of the old. This new grievance, if one, should be brought forward by a supplemental bill, that being the office of such a bill.

Two shippers on each road are made defendants. That it is proper to make them parties cannot be in doubt, as they have a direct interest. Whether a decree herein will be binding on other shippers, is a question not now for decision. And that the County Judges and Prosecutors have to do with these laws is plain. But these matters are exceedingly technical. The real question as to parties, is as to making the Railroad Commissioners and Attorney General parties defendant. As to the right to make the Attorney General and the Commissioners parties defendant, is a question that has been argued for and against with much earnestness and by the citation of many authorities.

386 At common law the office of Attorney General was the highest law office of the Crown. He represented the Crown in all legal matters and was the responsible officer as to the legal duties and prerogatives, appearing in the court of record and the House of Lords in all matters affecting the public, to the end that justice might be done in the name of the King. The duties of that office are not less in this country, and the specific mention of many things that he must do in behalf of the public and the State are not to be regarded as exclusive in the full performance of his duties.

The Constitution and Statutes of Missouri make special mention of many things that he is required to do. He is upon a salary, and cannot receive fees. He is a member of the State Board of Equalization and of Education, as well as other Boards. He prosecutes suits on official bonds. He prosecutes railroads for refusing to grant proper rates to shippers. He must appear before the Interstate

Commerce Commission when residents of the state are being wronged. He asks for, and receives, the aid of additional counsel. He sees to the enforcement of the banking laws, and proceeds against express companies and railroad companies and looks after forfeitures. These and a great many other things he is specifically required to do. And the importance and dignity of his office are such, that in most instances he is relieved from making oath to papers that he is permitted or required to file. And then out of apprehension that because certain things are specifically mentioned, that the conclusion would be arrived at by construction that all other matters were excluded, Section 4943 of the Revised Statutes was adopted, requiring that officer to institute and prosecute all suits and other proceedings at law and in equity requisite or necessary to protect the rights and interests of the state and to enforce any and all rights, interests or claims of the state against any and all persons and corporations.

It would seem that from the foregoing there could be no doubt but that it is the duty of the Attorney General to enforce the statutes in question presented by these cases, if valid, not only by virtue of the duties pertaining to that office by common law, but as well by the statutes just alluded to.

387 But there is a further statute which counsel on both sides have overlooked. Chapter I of the Laws of 1907 by Section 61 thereof eliminates all doubt by appropriating twenty thousand dollars per year to be drawn by the Attorney General from time to time

"which said sum shall be expended under the direction of the attorney general in the prosecution or defense of suits heretofore brought, or that may hereafter be brought by or against any railroad company, wherein the validity of any act of the general assembly may become involved or contested."

It will be noticed that this appropriation of this large sum of money is made not only to the end that the attorney general may seek to maintain the validity of any statute brought in question by any case hereafter brought, but likewise covers cases heretofore brought. And in the light of that section appropriating forty thousand dollars for the biennial period of two years to be drawn by the Attorney General and expended under his direction, leaves no room for argument that it is the duty of the Attorney General to enforce all statutes enacted by the General Assembly and see to it to the best of his ability that no court by decree or judgment holds the state enactments void.

Without scheduling the different statutes, the duties of the Commissioners are likewise plain. They are vested with authority to fix rates, and should the statutes in question be overthrown as being void, they will at once fix some other rate in their judgment valid. The question as to making the Commissioners parties defendant has been put at rest by the case of the Commissioners vs. R. R. 183 U. S. 53.

Again, as when the cases were brought, and first argued, it is urged that the state in effect is being sued in violation of the

Eleventh Amendment, and the question has again been argued with force, logic and eloquence. That a determined effort has been made by the use of words, phrasing and forms within the past two years, regardless of substance, effect and meaning, by the states to deprive the United States Courts of jurisdiction vested by the Constitution and laws enacted by Congress, is known by all. The argu-
388 ment is to the effect that all litigation of and concerning the fairness, and validity as well, of state statutes shall be in the courts of the state whose legislation is assailed, leaving the right and the only right of carrying questions of law to the United States Supreme Court by writ of error, but likewise insisting that in cases as to the reasonableness of rates, dependent wholly upon facts, that a writ of error be unavailing, and that the state courts of the state whose state legislation is assailed, shall alone and finally decide the case. And that this will be so in a chancery case as well as in an action at law by the only remedy, by writ of error to a State Supreme Court, when the case depends upon questions of fact, has been held by the Supreme Court in Egan vs. Hart, 165 U. S. 188. There are others who believe that all matters both of fact and law arising under the Constitution of the United States should in the end be decided by the only court created for that purpose. So it is that a sharp conflict is presented. Almost from the beginning of our government this question at short recurrent periods has arisen, but generally concluded by the Supreme Court holding that this is a National government with a National Judiciary, and that the National Constitution is and shall forever remain the supreme law of the land, anything in the laws of any state to the contrary notwithstanding. When our government was organized, every of the thirteen states was in debt, and some of them well nigh hopelessly so. In and out of both the National and State Conventions the arguments were for and against whether a state could be sued in a National Court. Hamilton and Marshall and Madison said it could not be done. Patrick Henry with his numerous doubts and opposition was filled with fear. Others like James Wilson and Edmund Randolph said the state would and ought to be suable by a citizen of another state for wrongs done. Near the end of Washington's first term, the famous suit of Chisholm vs. Georgia was decided, the holding being that Chisholm, a citizen of South Carolina could recover judgment for money that the State of Georgia justly owed him.

It is said that within two days from that decision, a reso-
389 lution was offered in the Senate to amend the Constitution to prevent such suits, by declaring that the Judicial power shall not extend to any suit against a state by a citizen of another state. But that failed because it was urged that notwithstanding the decision in the Chisholm case, such jurisdiction had never extended nor existed. Thereupon new phrasing was adopted, and a new resolution was offered, reciting that "The Judicial power of the United States shall not be *construed to extend* to etc.," shortly ripening into the Eleventh Amendment. The only purpose of that Amendment was to prevent a state from being sued by its creditors, and history fur-

nishes the proofs conclusive of the correctness of the statement. Those who are doubtful of this need only read what Chief Justice Marshall said in Cohens vs. Virginia (6 Wheaton).

At common law from time immemorial, a public officer was not allowed to justify under a void law or void order, but was compelled to make restitution of the property taken or to pay damages therefor. And such has been the uniform holdings in this country, and for the reasons that a void statute or void order is utterly without effect and is wholly unavailing as a defense. Such has been and is the law of England, and such has been and is the law of this country. And why such should not be the law on the equity side of the docket by preventative remedies against threatened wrongs, is difficult to conceive.

But the Supreme Court has held in the cases of In re Ayres, 123 U. S. 443, and Fitts vs. McGhee, 172 U. S. 516, that in cases wherein the state as a state is affected, that a suit against the officers is in effect one against the state in contravention of the Eleventh Amendment. It is to be noted that both the cases above referred to would have been decided as they were decided, if taken to the Supreme Court by writ of error to a State Supreme Court, or by appeal from a Circuit Court, if the Eleventh Amendment had never been adopted. This is so because in the Ayres case a full, adequate and complete remedy at law existed, and in the case of Fitts vs. McGhee the sole purpose was to enjoin criminal
390 proceedings. But it is now too late to object to the jurisdiction of a Circuit Court to enjoin the enforcement of a rate statute alleged to be void because confiscatory, although concededly the holdings now are that the test is not whether the state is a party to the record by name, but is the state in effect a party?

But in the case at bar the state as a state has no interest. And the state as a state is not attempting to confiscate property. It is the government of the State, first by its legislature, and then by its officers, who according to the allegations of the railways, are attempting to confiscate property. Whether such acts will amount to confiscation if carried out, relate to the case on its merits. But the point to the whole matter is, that the state is not seeking to act, and no effort is made to enjoin the state, either by name or in effect. And this distinction is not metaphysical, but is a substantial distinction, clearly and unmistakably pointed out by Justice Matthews in Poindexter vs. Greenhorn, 114 U. S. 270, 290, wherein he said:

"In the discussion of such questions, the distinction between the government of a state and the state itself is important, and should be observed. In common speech and common apprehension they are usually regarded as identical and as ordinarily the acts of the government are the acts of the state, because within the limits of the delegation of power, the government of the state is generally confounded with the State itself, and often the former is meant when the latter is mentioned. The State itself is an ideal person, intangible, invisible, immutable. The government is an agent, and, within the sphere of the agency, a perfect representative, but outside of that, it is a lawless usurpation. The Constitution of the State is the

limit of the authority of its government, and both government and state are subject to the supremacy of the Constitution of the United States, and of the laws made in pursuance thereof. So that, while it is true in respect to the government of a State, as was said in Langford vs. United States, 101 U. S. 341, that the maxim, that the
391 king can do no wrong, has no place in our system of government; yet, it is also true, in respect to the State itself, that whatever wrong is attempted in its name is imputable to its government, and not to the State, for it can speak and act only by law, whatever it does say and do must be lawful. That which, therefore, is unlawful because made so by the supreme law, the Constitution of the United States, is not the word or deed of the State, but it is the mere wrong or trespass of these individual persons who falsely speak and act in its name.

So that it follows that the State of Missouri is not a party either by name, nor in effect. And this Court has jurisdiction both of the subject matter and of the parties, to inquire into the questions in the case and on a final hearing decree whether the rates fixed by statutes are remunerative or confiscatory.

On what basis the Master shall report, is not clear. Every person whether a passenger or shipper, is entitled to have efficient service at reasonable rates, which the company must give for such compensation. Whether such charges for every person can be fixed by a decree, is doubtful, and in any event will be attended with much difficulty. But if all earnings in the state for state business are to be taken in the aggregate, less expenses, the question is attended with difficulties, because of the matter of expense, it being difficult to apportion the expenses between the state and interstate business.

If the parties cannot agree, the Master should be directed by a supplemental order.

These cases should be brought to a final decree, and that decree such as can be carried to the Supreme Court for final determination, and not for a reversal because of an error of the Master or the Court in determining the expenses. What would be still more to the point would be for the Master to determine the expenses from the standpoint of both the railway company and the Attorney General. And there is no valid reason why the cases should not be brought to a
conclusion within the next ninety days. And if this is not
392 done, the delay will not be chargeable to the Court.

This memorandum opinion was written many weeks since, but withheld by request, awaiting the decisions of the Supreme Court in the Minnesota and North Carolina cases. Those cases were decided on the twenty-third instant, adversely to the State officers. And it is deemed unnecessary to await the opinion, which this Court has not yet seen.

Kansas City, Missouri, March 31, 1908.

393 The opinion filed herein on the 8th day of March, A. D. 1909, is in words and figures as follows:

In the Circuit Court of the United States, Western District of Missouri, at Kansas City.

No. 2988.

THE ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, Joseph P. Rice, John A. Knott, and Frank A. Wightman, Railroad Commissioners of the State of Missouri, et al., Defendants.

And Seventeen Other Like Cases, Being Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004, 3006.

Mr. Frank Hagerman for each and all of said Eighteen Railroad Companies.

Mr. Herbert S. Hadley, Attorney General, Mr. John Kennish, Assistant Attorney General, Mr. S. B. Ladd, and Mr. Frederick W. Lehmann, for all defendants, in all of said cases.

With Mr. Hagerman the following appeared for the railroads as designated:

Mr. W. F. Evans for St. L. & S. F. R. R. Co.
Mr. M. A. Low for C. R. I. & P. Ry. Co.
Mr. M. A. Low for St. L. K. C. & C. Ry. Co.
Mr. O. M. Spencer for C. B. & Q. R. R. Co.
Mr. J. G. Trimble for Q. O. & K. C. R. R. Co.
Mr. Gardiner Lathrop for A. T. & S. F. R. R. Co.
Mr. S. W. Moore for K. C. & S. Ry. Co.
Mr. Geo. P. B. Jackson for M. K. & T. R. R. Co.
Mr. J. L. Minnis for Wabash R. R. Co.
Mr. R. A. Brown for St. J. & G. I. Ry. Co.
Mr. E. L. Scarritt for C. & A. R. R. Co.
Mr. John H. Lucas for K. C. C. & S. Ry. Co.
394 Mr. M. L. Clardy for Mo. Pac. R. R. Co. and St. L. I. M. & S. R. R. Co.
Mr. J. D. Hostetter for St. L. & H. Ry. Co.
Mr. S. H. West for St. L. S. W. Ry. Co.

Opinion.

SMITH MCPHERSON, *Judge:*

1. Each of the eighteen railroad companies is doing a general railroad business within the State of Missouri, all but one doing both a state and interstate business. Under the general railroad statutes of the state, the railroads were classified under three classes, the one class being allowed to charge for passenger rates three cents per mile, and the other two classes, four cents per mile. Freights likewise were classified with certain maximum rates. The Railroad Commissioners

of the state were authorized to fix and establish rates, not in excess, however, of these maximum rates fixed by statute.

In the year 1905 the Legislature of the state by statute which took effect June 16th, 1905, provided for certain maximum charges. On the day the statute took effect each of the railroad companies filed their bills of complaint herein against the Attorney General and Railroad Commissioners, asking that they be enjoined from enforcing the statute upon the ground that the rates thus fixed were not remunerative, resulting, as is alleged, in the taking of their property without compensation. A restraining order in each case was issued, and within a few days thereafter upon notice and full hearing, a temporary writ of injunction as prayed was issued. Several months thereafter the cases were referred to a Special Master to take the evidence and make his findings of fact and report the same to the Court.

In 1907 the Legislature of the State repealed the statute of 1905 and enacted a substitute therefor, which act was to take effect in June, 1907. On or about the day the statute was to take effect
395 each of the complainants filed its amended and supplemental bill setting forth the pendency of the actions and the action theretofore taken by the Court therein, and asking that the enforcement of the statutes, one of which fixes certain maximum freight rates, and the other, passenger rates of two cents a mile, be enjoined on the ground that such rates were not remunerative, but confiscatory, and if enforced, would be taking the property of the railroad companies without compensation. At or about the same time the state officers instituted proceedings in certain State Courts of Missouri against the railroad companies asking for an order that said two statutes of 1907 be enforced.

The Attorney General and his associates insisted that an entirely new situation was presented and insisted that the proceedings were instituted in the State Courts in advance of filing the Supplemental bills herein, and insisted that the State Courts had first acquired jurisdiction of the subject matter which would be to the exclusion of any action by this Court. The railroad companies insisted that the general subject matter was covered by the original bills of complaint and defendants' answers thereto, and that the statutes of 1907 should be carried forward by supplemental bill. It was likewise most earnestly contended that the actions in this Court were in effect against the State of Missouri in contravention of the Eleventh Amendment to the Constitution of the United States. But this Court after the fullest argument and consideration adjudged that this Court was not seeking to take jurisdiction against the State of Missouri as a state, and that the very office and nature of the supplemental bill as recognized from time immemorial by the equity practice required this court to take cognizance of the supplemental bills and proceed with the litigation. (161 Fed. 419.)

In June last by agreement of parties, the Court revoked the previous order of reference to the Special Master and directed him to return to this Court the evidence he had already taken, and ordered that the case be tried upon oral testimony and such documentary

evidence as the respective parties might offer. The evidence has been concluded, and the cases have been fully argued, and are now for final decree.

2. Many believe that the better and safer practice would be
396 to confine all litigation to the State Courts wherein is involved the validity of rates to be observed by railroads and other public utilities when such rates are fixed by ordinances of a city or statutes of a state. It is insisted that this would be more deferential and more in a spirit of comity to first allow the State Courts to pass upon such questions. It is urged that the decree of a State Court could be carried to the Supreme Court of the United States for final decision.

This is plausible and convincing to men who have not thoroughly considered the question. It is plausible, because such a course can be followed. But every thoughtful and patriotic man well knows and believes in the proposition that the Supreme Court of the United States should ultimately pass upon all questions arising under the Constitution of the United States. And the question whether rates thus fixed by ordinance or statute are confiscatory or remunerative, is one arising under the Constitution of the United States, and that question is wholly a question of fact, and is not longer an open question as to the law. This being so, the question cannot be passed upon by the Supreme Court of the United States on these questions of fact when there is a conflict in the testimony. Section 709 of the Revised Statutes of the United States is the only authority for taking a case from the highest court of a state to the Supreme Court of the United States, and the procedure thereby allowed is by writ of error. And the office of a writ of error is to authorize an appellate court to review questions of law and not to review questions of fact. So that when a case goes from the Supreme Court of a state to the Supreme Court of the United States, it can only go by writ of error, and the Supreme Court of the United States necessarily must take all questions of fact as being foreclosed by the State Courts. Therefore, when the case is wholly dependent on controverted questions of fact, it is utterly useless to carry the case to the United States Supreme Court from the decision of the State Courts, as an affirmance necessarily will be ordered, and the question as to whether the
397 United States Constitution is being trampled down cannot be considered. There is no other method of reviewing the decision of the State Court by the Supreme Court of the United States than by writ of error, and this is so in chancery cases as well as in actions at law.

State Corporation Com. of Va. v. Atlantic Coast Line Co., recently decided by the Supreme Court of the U. S.
decided by the Supreme Court of the U. S.
Bement v. National Harrow Co., 186 U. S. 70, 83.
Dower v. Richards, 151 U. S. 658, 666.
Egan v. Hart, 165 U. S. 188.
Adams v. Church, 193 U. S. 510.
Chrisman v. Miller, 197 U. S. 313, 319.

It follows that all efforts to enforce the trial of such questions in State Courts would result, if successful, in having the State Court finally determine when the National Constitution as the supreme law of the land, shall be applied. The Supreme Court of the United States is the tribunal to finally determine all questions, including those of fact, wherein the National Constitution is involved.

3. Upon their face the statutes in question are with reference only to state commerce. But it is urged that they are void because in effect they directly have to do with interstate commerce. The facts are as follows:

Between Kansas City and the Joplin mining district there are three lines of railway. The Missouri Pacific between these points is wholly within the state, and the other two, partly within and partly without the state, and therefore between the two Missouri cities of Kansas City and Joplin, are doing an interstate business under the decision of Hanley v. R. R., (187 U. S. 617.) The same situation exists between the cities of St. Joseph and Kansas City, two of the roads being wholly within the State between the two points, and two partly within and partly without.

And between the cities of St. Joseph and St. Louis such situation is emphasized, the Burlington road being wholly within the state between the two cities, and the Missouri Pacific a part of
398 the distance being within the State of Kansas. The facts are that when the Missouri statutes lowered the passenger rates on the roads wholly within the State between said points, the interstate roads between said points were compelled by competition to lower their rates to correspond with the state rates thus fixed by statute. By reason thereof the argument is that the Missouri statutory rates control the interstate rates between the cities named, and therefore are void as being in conflict with the Commerce Clause of the National Constitution.

During the period of railroad building, for a time the western termini were at the Mississippi River. By reason thereof, and by reason of competition on account of river transportation, the railways fixed rates from the East to that river. After a time roads were completed to the Missouri river. Rates to points on that river were fixed on rates to the Mississippi River, plus rates between the two rivers. And for thirty years or more rates have been thus fixed. And as the Missouri statutes lower the rates between the two rivers, the argument is that the statutes lower the interstate rates from the East to Missouri River points, and to points to the West.

This presents a great question, and one which is far reaching, and in importance cannot be overstated. In the great case of Ex parte Young, (209 U. S. 123,) decided but last year, the Supreme Court in its majority opinion in speaking of this, said "The question is not, at any rate, frivolous." But the point was not decided. But here the question is fairly and sharply presented for decision, with no precedents directly in point.

From the days of the Confederacy to the present time there have been clashings between the National Government and the States, owing in part to the ever changing trade and commerce, and in part

to the different schools of belief as to our system of government. And the pendulum will ever move back and forth. Even those who most strongly denounce the Kentucky Resolutions, and the doctrine of nullification, are often the first to forget that they believe in not only the express but the implied powers of our government
399 as taught by Marshall in McCullough v. Maryland, (4 Wheaton,) and that this government is one of the whole people. Such as thus believe are often the first to advocate and rush through in the form of state regulation, measures for their own state, regardless of the rights of the people of other states. Neither the Ohio River, nor any other boundary has been the dividing line. Many of the cases in which state statutes have been declared void by the Supreme Court are statutes requiring a license to sell imported goods; imposing a tax on bills of lading for gold carried out of the state; imposing taxes on alien passengers; imposing taxes on passengers and merchandise carried into or out of the state; taxing drummers; regulating telegrams sent to other states; taxing those who use wharves; requiring inspection of animals for slaughter; and other like statutes in principle. All such statutes have gone down by reason of the Commerce Clause, and the uniform holdings of the Supreme Court.

The Commerce Clause gives Congress the power to regulate commerce:

1. With foreign nations;
2. Among the several states;
3. With the Indian tribes.

As to the first and last no doubt Congress can not only regulate, but can prohibit. It is another proposition whether commerce can be prohibited among the states.

One of the methods resorted to for the construction of Constitutional provisions, as well as of statutes, is to ascertain the then existing evils. We find that New York and other sea coast states placed burdens on commerce from inland points to sea coast points and across such states for shipment by water. It was burdens on commerce that the inland localities complained of, and that such burdens should not be imposed, was the reason for adopting the Commerce Clause. If there had been no such burdens, it is likely that there would have been no Commerce Clause, and possibly no Constitution. I have searched diligently, but find no case decided by the Supreme Court declaring a State statute void that did
400 not in some form and in some manner place a burden on, or in some way hamper or obstruct, commerce from or to another state.

The case of Louisville & Nashville R. R. v. Eubank, (184 U. S. 27,) comes more nearly sustaining the proposition that the Statutes of Missouri impinge upon the Commerce Clause than any other case that I recall. There the State of Kentucky by its Constitution provided that more should not be charged for a short than a long haul. The company had rates in force from Nashville, Tennessee, to Louisville, Kentucky, which were less than was being charged from points in southern Kentucky to Louisville. This was held by the Court of

Appeals of Kentucky to be in violation of the State Constitution. So that we have a case of a state law, with the decision of the State Courts read into it, providing that more shall not be charged for a short haul wholly within the state, than for a long haul partly without the state. This must be so, because the same provision of the Kentucky Constitution when applied to places all within the state was upheld by the Supreme Court, as will appear from the case of Louisville & Nashville R. R. v. Kentucky, 183 U. S. 503.

And the case of Wabash &c., R. R. v. Illinois, 118 U. S. 557, was decided in like manner, because and for the only reason that the Supreme Court of Illinois had so ruled as to read into the statute the objectionable feature.

But the Missouri Courts have not so construed these statutes of the state. When they do so decide, then the Eubank, and Illinois cases will be the precedents to thwart such legislation as thus construed. In the meantime there is no belief that the Missouri Courts will so decide.

The case of Hall v. De Cuir, 95 U. S. 485, is cited by counsel for the railways. Louisiana had a statute requiring carriers to receive and carry passengers without distinction on account of race or color. The steamboat in question plied between New Orleans and Vicksburg, doing both a state and an interstate business. The vessel was duly enrolled and licensed for the coasting trade. The
401 boat had an upper and a lower cabin, the upper for white people, and the lower for colored persons. The plaintiff De Cuir was a colored woman and took passage at a landing in Louisiana for another landing in that state. Being refused admission to the upper cabin solely because she was colored, she was awarded damages in a State trial court, which judgment was affirmed by the State Supreme Court. The Supreme Court of the United States reversed the judgment. Two reasons were given for the reversal, the one by Justice Clifford on the ground that navigation of the Mississippi River is wholly within the control of Congress. The other opinion was by the Chief Justice, who grounded his opinion upon the proposition that with the objections of most people to associating and rooming with colored persons, that to allow a colored woman to be carried in the first cabin, even though but for a ride within the state, would drive white passengers seeking an interstate ride from the boat. Or, as I have hereinbefore stated the statute in effect placed a burden on the interstate business. After discussing the question, and the many and great difficulties in applying the Commerce Clause, the Chief Justice said:

"But we think it may safely be said that State legislation which seeks to impose a direct burden upon interstate commerce, or to interfere directly with its freedom, does encroach upon the exclusive power of Congress."

The State statute in order to be declared void, must by its terms and recitals interfere directly with commerce to or from another state, or the statute by construction given it by the highest court of the state must so operate in its results. But here we have no such recitals in the statute, and it has not been so declared to mean by the

Missouri Courts. And while counsel for the railways do not in terms so insist, they in effect urge that the laws of political economy, custom and convenience shall act as a substitute for Missouri statutes, and the decrees of the Missouri Supreme Court. In other words, they in effect, and I believe in language insist that the rules formulated a third of a century ago for making rates first to the one river,
402 and then between the two rivers, and the laws of competition, shall be regarded as the equivalent of statutory law. I am mindful that it is believed by many that to not recognize these laws of trade, will impair if not destroy the great cities like St. Joseph, Kansas City and St. Louis. I am mindful of the fact that between the two rivers the distance by the Burlington is but 198 miles, with other roads 300 miles or more, and that the shorter road necessarily fixes the rates between all points on the rivers. But competition does that, and the statutes are silent. The statute may or may not be unfair. I am considering the Commerce Clause as to its bearing on statutory enactments, and am not forgetting that many valid statutes are unfair, and some even unrighteous.

I have believed heretofore that the rights and duties, powers and prerogatives of any one state are the same, neither more nor less than those of any other state, and this is so whether we compare two or more of the original Thirteen, or one of the older with one of the newer states. But in effect the argument of counsel for the railways is that this is not so. Missouri and Maine were admitted into the Union the same day by the same enactment. Maine has but its percentage of commerce into and out of the state, with no trans-state business by reason of its geographical position, and has no large city. Missouri is a central state, with large cities, one of which is third in importance as a wholesale center, and second to but few as a manufacturing place. St. Louis and Kansas City are the gateways for both commerce and passengers, surpassed only by one, or possibly two other places. These facts are of tremendous importance to those who legislate either for the state or the nation. That legislation can be harmful to these great interests, any thoughtful person can readily see. But that these facts, important as they are, can be used to give a construction to or coloring of the Commerce Clause, I do not believe. In my opinion it is much the wiser to contend for the strength and power of the nation by insisting also upon the rights and powers of the states as was intended they should
403 have. For a third of a century it has been the recognized constitutional construction that the states have the power within defined limits to regulate charges by railways wholly within the state. And to now say that one state like Maine can regulate charges by a railway for transportation wholly within the state, and that Missouri cannot because flanked by two great rivers, and by a long time custom in fixing rates, is to announce a rule not heretofore recognized, and in my opinion one entirely illogical.

It may or may not be true, that it would be for the better to have all the interstate railways of the country, doing both a state and an interstate business, under one supervising authority, such as a com-

mission, regulating both classes of business. But under the Commerce Clause can this be done?

Employers Liability cases, 207 U. S. 463.
Wabash R. R. v. U. S. (7th Circuit) — Fed. Rep. —.
9 Columbia Law Review 38.
U. S. v. Colorado &c., R. R. Co., 157 Fed. 321 (8th Circuit).

Difficult as these problems are, they can and will be solved, and for the right. Pessimists discourage. However, their statements that everything is wrong, and will grow worse, must be heavily discounted. Because railway systems reach into many states, and are units, crossing state lines arbitrarily fixed, a hopeless condition is not hereby brought about. It is not true as some say, that each state can lower the rates to confiscation, as all know who have read the decisions to any purpose. I believe as firmly as does anyone in the power and the rights of our general government, and when the clashings come as to the power of the state and the general government, let the doubts be solved in favor of the government. But as to some matters there are no doubts, and two of these are that the Constitution is the supreme law of the land, and that as to all local matters the states are in control. All should insist upon both.

4. It is contended that the statutes are void because of the excessive penalties, reliance being based on the case of Ex parte Young, (209 U. S. 132.) Until the decisions in the Minnesota cases, (134
U. S. 418, and 467) it was an open question whether a review
404 of rates fixed by a legislature or a commission acting under a legislative authority, could be had by the courts. The Minnesota statute authorized a commission to fix certain rates, which rates thus fixed should be final and conclusive. The Supreme Court of the State adjudged that such rates were not merely advisory, nor prima facie reasonable, but conclusive, and not subject to review by the courts. (37 N. W. 782.) But the United States Supreme Court reversed that decision, and notwithstanding the strong dissenting opinion by Justice Bradley, concurred in by Judges Gray and Lamar, and Justice Miller hesitating, the question is now at rest, and the courts not only can, but must, determine the question whether such rates are reasonable.

In time the Legislature of Minnesota believed it could in another way make its determination as to rates conclusive and beyond the powers of the courts to interfere. This was attempted by providing penalties for violations, to that which was equal for one week's business to life imprisonment for all officers and agents, and confiscation of all the railway property, if resistance by litigation was made, and such litigation failed. The decision in Ex parte Young followed, the Supreme Court failing to see the distinction between a statute providing that agents should become felons with life imprisonment pronounced, and all corporate property seized and confiscated, if an unsuccessful contest should be made in the courts.

The Statute of Missouri of April 15, 1905, covered by the original bills herein, fixes the only penalty for violations by allowing treble damages, and a reasonable attorney's fee. Citation of authorities need not be made to sustain such penalties. And in any event that

statute has been repealed. The two cent passenger rate statute of February 27, 1907, provided for a penalty of not less than one Hundred nor more than five hundred dollars. What shall be deemed a complete or separate offense is not defined. The freight rate statute of March 19, 1907, provides for no minimum penalty, but the same shall be a fine not exceeding five thousand dollars. Imprisonment is not designated under either statute, unless by some general statute for the non-payment of the fine; while under the Minnesota
405 statute the penalty for each offense was fixed at a fine of not more than five thousand dollars, or imprisonment in the State prison for not more than five years, or both.

This objection to the Missouri statutes is without merit.

5. Evidence is before the Court tending to show that a large number of men have been discharged from the service of the railroad companies by reason of the reduction of rates. And this fact is urged as one element that should be considered. It is true that before interest can be paid on the bonded debts, that operating expenses, including labor, and materials, largely made up from labor, must be paid. And as of course all of these including interest must be paid before dividend checks are issued. The states should and usually do attempt to legislate in the interest of laboring men. And if the legislature under consideration is hostile to their interests, the legislature, and not the courts, have the responsibility. I agree to all that was said in argument in their behalf. I agree that in sobriety, and intelligence, and faithfulness to duty, they are surpassed by no other class of men. Their dangers are great, and the people owe them much. But if employés are reduced in number, or now or later on their compensation will be reduced, and if such results are by reason of legislation, then their remedy, if they have one, must be sought elsewhere than in the courts.

6. It is urged in argument that the reduction of rates will impair the service to the public. The charter of a railroad is an implied contract with the state. The company is given such right under such contract to perpetually operate its road. The state agrees that it shall be reasonably and sufficiently remunerated according to the business done. The company agrees to furnish reasonably efficient service. To furnish no service is a complete breach of the contract. To furnish a partial service is a partial breach. What is a reasonable service, is a question of fact dependent upon the circumstances of each case.

Thus it is that the Supreme Court has held that in some instances the state legislation is valid which requires through and in-
406 terstate trains to stop at important towns to let off and take on passengers, state and interstate.

Mississippi v. R. R., 203 U. S. 335.
L. S. & M. S. Ry. v. Ohio, 173, U. S. 285.
Gladson v. Minnesota, 166 U. S. 427.

And in other cases such state legislation has been declared invalid.

R. R. v. Illinois, 163 U. S. 142.
R. R. v. Illinois, 177 U. S. 514.
R. R. v. South Carolina &c. 207 U. S. 328.

All those cases turned on the facts, and the question of fact was as to the service the public should have.

Of course the service rendered and the compensation received should have a proper relation. The expenses incident to, and that can be specifically located in connection with, a particular train, are not all the expenses to be accounted for, as will hereafter be discussed. But it is true that without reasonable compensation there cannot be reasonable service. It is common information that the public in many localities is demanding increased service.

But this phase of the question is so indefinitely covered by the evidence, and is so general in the very nature of the question that no decree can be rendered herein that will cover the proposition.

7. It is urged that these statutes are void because they are not enforceable as to some of the railway companies within the state, and the claim is, that being void as to some, they are void as to all. It is conceded in argument that as to two roads, the St. Louis & Hannibal, and the Kansas City, Clinton & Springfield, the rates fixed are not compensatory. The State's experts agree to this.

Usually statutes fixing rates for railroads to observe, classify the roads according to their earning power, and fix the highest rates for those earning the least. But this was not done, except that railroads of a length not greater than forty-five miles not owned nor leased nor controlled by a trunk line, may charge four cents per mile per passenger.

407 The sole theory upon which rates are adjudged void can only be that the rates are not compensatory, and to so decree, the Court must have the complaint of each and every road making the claim. Complainants have recognized this by their counsel in bringing as many independent actions as there are railroads complaining. Whether there are any other railroads within the state than these eighteen complainants, neither the allegations of the pleadings nor the evidence show. Perhaps the Court should take judicial notice of whether there are other roads or not. Be this as it may, the Court is not advised. I assume there are no other roads within the state than these eighteen.

The record shows that two of the cases, those brought by the Rock Island, and the St. Louis, Kansas City & Colorado, have been consolidated for trial purposes, the one road having become the owner of the other since the litigation commenced. The record further shows that nine cases were tried, and that the other eight cases were to be covered by decrees the same as decrees in some of the cases tried, the particular cases being designated by the record. All this shows to my mind that complainants' counsel rightly conceived the theory upon which these bills of complaint were presented. The record shows further that before the Master, there were many attempts for position on both sides as to what cases should be tried, the Attorney General and his associates desiring that the Burlington and two other strong roads having the short lines, should be heard, and the others either continued, or that decrees in the other cases should follow the decrees in the cases of the strong roads. Counsel for the railroad companies were desirious of trying the cases brought by some of

the other companies, or at least that the roads should be classified into three or four classes, but that the Court should hear only one case of each class. This emphasizes the theory that was in counsels' mind all the way through this litigation.

In one respect at least it seems to me that these statutes should be declared valid or void as the facts may warrant, as has been
408 frequently done with reference to ordinances of cities. The ordinances of cities regulating speed both for trains and teams are declared unreasonable, and therefore not enforceable as to some parts of the city, and valid and enforceable as to other parts of the city not so densely populated. These statutes are not void upon their face. The company which alleges that they are void must make a showing that the rates, considering all the facts and circumstances, are not compensatory as to that particular road, failing in which, the statute will be enforced, and successful in which, as to that particular road the statute will not be enforced.

The case of R. R. v. McKendree, (203 U. S. 514) is not in point, because there the question was with reference to an order of the Secretary of Agriculture which was void in part and was not separable, it not being possible to eliminate the valid from the void features.

The Cotting case, (183 U. S. 79) was decided by reason of an entirely different principle. The statute in that case on its face shows that a company doing little business was not *to* be regulated, while the company doing much buisness was made subject to the statute. And by reason of that vice, the statute was held void. That the Cotting case is not in point, see:

St. Louis, &c. v. Illinois, 185 U. S. 207.

McLean v. Arkansas . . . U. S. . . . (January 4, 1909).

The Connolly case, (184 U. S. 540,) was likewise decided in part at least because the statute did not apply to all classes of persons engaged in a like business, and that the statute was not separable, the valid from the invalid.

The case of Ju Toy, (189 U. S. 253) the Trade Mark cases (100 U. S. 82,) and the recent case of Howard v. R. R. (28 Sup. Ct. Rep. 141,) were decided by reason of this same principle, namely, as to whether the statute is separable or not.

Therefore the holding is that these statutes are not void upon their face, and cannot be declared void for the one reason that the evidence shows they are not enforceable as to two or more roads.

8. The state earnings are made known to a certainty, concerning which the experts on both sides agree. And whether in earning them the company gains a profit, or sustains a loss, is de-
409 pendent upon the expense in making such earnings. Some of these expenses can be definitely specified, but others, like maintenance of way, salaries of all officers including ticket agents, handlers of freight, terminal expenses, compensations of many laborers, and other things are all occasioned for carrying both freights and passengers, state and interstate, and miscellaneous of each. And herein is the problem how to make the apportionment. The track mile, or train or car mile does not furnish the solution,

because everyone agrees that neither of those methods will do, and no one of the experts or counsel on either side asks for such a solution. Therefore there is and can be but one of two methods adopted. Neither can be relied upon if mathematical precision is demanded. But the one more nearly correct and satisfactory is the one to be adopted. And that is what is done in litigation concerning injuries and death; the age, earning power, loss of time, can be fixed, some with certainty. How many years the party had before him is fixed by mortality tables, wholly unreliable as to the individual, but fairly certain as to the average.

In taking property under the power of eminent domain, we know the assessed value, the amount of taxes, the rents, and maintenance. Some or all these elements are put in evidence, while all other is matter of opinion, concerning which witnesses and jurors differ. And so it is in most litigation.

9. The theory to now recognize must be either the proportion of earnings, state and interstate, or ton and passenger mile.

That it costs more to carry either freight or passengers proportionately for a short than a long haul, is undoubtedly true, although all the elements are not more expensive. Local trains generaally have poorer and older and cheaper cars and locomotives. But their speed is greater between stations. There are many stops. They carry proportionately much greater dead weight. They do much switching, and there are many delays. Their crews are paid more proportionately to distance and what is carried. The trains are daylight trains only. With freight the carload and number of cars are much the less, and from station to station grows less, and is largely made up of single parcels, boxes, and individual shipments from as many consignors to as many consignees, first put in one station, and at the end of the trip into another station by the company. Usually there are two terminals, comprising an enormous amount of the investments and expenses of the company. The local train is seldom loaded to the capacity of the engine, to the loss of much of the investment and expense. The clerk hire, selling tickets, issuing bills of lading, making expense accounts, and auditing and making records, are attended with like expense for the small and the large items. Many stations would be done away with but for local business.

In nearly every instance enumerated, as to the interstate, which includes trans-state, the reverse is true, although much magnified in my opinion as to terminals, and particularly as to trans-state, because in my judgment some of the interstate business has two terminal expenses within the state. The two gateways in Missouri through the one or the other of which a large percentage of business both interstate and trans-state passes, are Kansas City and St. Louis. And at both of those places the investments are very large, and of course whether owned or rented, the expense is practically the same. But these terminals are for both. And while I believe the terminal expenses at St. Joseph, Kansas City and St. Louis as to trans-state business is minimized, I do not agree with the experts who claimed

that there are none of those expenses. Their cross examination shows this to be a mistake.

But from the great weight of the testimony, it can well be said that the ton mile is not reliable, and the revenue is more nearly correct, as showing that it costs more by twenty-five per cent. to carry passengers, and fifty per cent. to carry freight locally than it does when interstate. Generally speaking this is undoubtedly true. There are exceptions, one of which is shown by the Burlington with its three roads from St. Joseph, the one to Villisca, Iowa, an-
411 other to Creston, Iowa, and a third to Chariton, Iowa. They are all interstate roads, each with two terminals, but each operating only local and daylight trains. The Wabash illustrates this with roads across the arbitrary state line between Missouri and Iowa. And there are other illustrations, but less noticeable, in the testimony.

But all these are exceptions and the testimony establishes the rule as stated.

The Missouri Legislature has recognized the proposition in all of its rate statutes, and particularly in the statutes now assailed, that it costs more per mile for a short than a long haul.

See Act approved April 14, 1905; and the Act of April 15, 1905, covered by the original bills herein. The passenger rate statute under consideration fixes a two cent fare for all trunk lines, and four cents per mile for a road less than forty-five miles in length.

The freight rate statute under consideration, in every schedule recognizes the principle that proportionately there should be more charged for a short than a long haul. For instance, Class D. allows a charge of five cents per hundred for carload lots for the first twenty five miles, and one-half cent for the second and additional twenty-five miles.

And commencing with the statute of Pennsylvania of 1846 chartering the Pennsylvania road, to the present time, every statute upon the subject fixing freight rates, and many of them fixing passenger fares, recognizes this principle. So that while it is a legislative function to fix xrates, we have innumerable legislative recognitions of the greater cost for weight per mile for a shorter than a longer haul, and in some instances as to passengers. And no state has so recognized this to a greater extent than has the Missouri Legislature.

And the courts passing upon the question, have invariably recognized this as being so, and that the revenue theory is the correct one as against the ton mile.

412 This was so recognized by the Supreme Court of Pennsylvania in case of Railroad v. Pennsylvania County, 68 Atl. Rep. 677, but not discussed.

In R. R. Co. v. Tomkins, 90 FFed. 363, Judge Carlandd, of the South Dakota District, in passing on the statutes of that State, said:

"This Court believes that it is fair and just to first ascertain what per cent of the total gross earnings in any one year the total local earnings are for that year, and having ascertained that per cent. to take the same per cent. of the total value of the property as a fair value upon which to fix local earnings."

The decree was reversed, and although an equity case, remanded because of a failure to make a material finding. (176 U. S. 167.) The same case under the title of R. R. Co. v. Smith, 110 Fed. 473, on final hearing resulted in a decree enjoining the rates, and the question of expenses was arrived at by the extra cost and on the revenue theory.

The case of R. R. Co. v. Keyes, 91 Fed. 77, is an opinion by District Judge Amidon, concurred in by Circuit Judge Thayer, enjoining North Dakota statutory rates. The argument of the opinion condemns the ton mile theory, and adopts the revenue theory. The criticism of the case is, that conditions in sparsely settled North Dakota are not like those in this state. But the question of which theory was the more accurate for computation, was fully covered, and the ton mile was condemned.

In re Arkansas R. R. Cases, (163 Fed. 141,) decided but a few months since by Judge Van Devanter of this Circuit, a temporary injunction was issued against the enforcement of the Arkansas statutory freight and two cent passenger rates. And in most respects the State of Arkansas with reference to rates is like that of Missouri, especially the south half of Missouri. Judge Van Devanter in discussing this question said:

"Other standards are suggested, but the proofs indicate that none of them is as satisfactory or accurate as is the difference in cost in its relation to the revenue."

413 And the proofs, including statistics and tables and some of the same expert witnesses on each side, were the same as in the cases at bar.

The great case from Nebraska of Smyth v. Ames was heard on the Circuit by Justice Brewer on oral testimony as the cases at bar have been heard. The entire discussion of the question by Justice Brewer in a lengthy opinion is on the extra cost and revenue theory, entirely ignoring the ton mile theory. That case resulted in the state statutory freights being enjoined by Justice Brewer, District Judge Dundy concurring.

The case was carried to the Supreme Court (169 U. S. 467,) resulting in an affirmance of Justice Brewer's decree. The opinion of the Supreme Court by Justice Harlan is exhaustive, and the tables used by him to show the facts, and the entire argument is with reference to the extra cost and revenue theory, utterly ignoring the ton mile theory.

Recurring to the Tomkins case, (90 Fed. 363,) above alluded to, that case was reversed by the Supreme Court, (176 U. S. 167,) and the question of fact was only discussed from the revenue theory. The reversal was only because the lower court recited that it was unable to ascertain what was the actual cost of earning the local earnings for certain years. But as the lower court on the first hearing proceeded on the extra cost and revenue theory, and as that was what was discussed by the Supreme Court, and under the mandate the case went to decree, (110 Fed. 447,) on the revenue theory, I an convinced that the Supreme Court for the guidance of trial courts has adopted the revenue theory as the one more just

and equitable both to the patrons of the road and to the companies.

So that we have the Supreme Court in the two cases recognizing the revenue theory. Two Circuit Judges of this Circuit have so held. And the same holdings have been made by at least three District Judges, and the Supreme Court of Pennsylvania impliedly, although the argument in that opinion is not strengthened by reason of a statement as to the measure of proof, concerning which the minority opinions without doubt are correct.

414 As an argument against the revenue theory, and for the ton mile theory, no court has spoken in so far as counsel on both sides and I are advised. In some phases this is a question of fact, or logic, or argument, or opinion, partaking of all. But so many eminent courts have thus spoken, even though not a question of law, and even though the traffic in the states differ, yet such opinions tend most strongly to create an undoubted belief that the cost for carrying both passengers and freight locally is greater proportionately than for doing a long or interstate business, and that the revenue theory is the only one to apportion the cost of each business.

The Wisconsin Railroad Commission made an exhaustive and thorough investigation of these questions two years since. Evidence of both sides was heard. Experts interested, and those not interested, testified. Many months of time were given to the hearing and in reaching conclusions. A valued report was the result. The findings and conclusions were:

1. The cost of carrying local and state freight is greater than for carrying interstate freight and passengers.

2. That this extra cost must be considered, and then take the gross earnings as the basis upon which to allot expenses between the state and interstate business.

3. That less than two and one half cents per mile for local or state passengers was not remunerative in the State of Wisconsin.

10. When the statutes in question were enacted, it was believed by many that by reducing the fare, there would be much more travel. For a month or so this proved to be true. But with the novelty gone, the testimony shows that the increase has been less than three per cent. and more nearly one per cent.

It was likewise believed by many that with the abolition of passes and other forms of free transportation, that expenses would be lessened and receipts increased. Ministers sometimes received free transportation, but generally at half rates. Many lawyers and doctors received passes under guise of retainers for services never performed. Bankers received them under the claim that it was compensation for signing bonds, and cashing Chicago and St. Louis exchange.

415 Politicians demanded, extorted, and received them for supposed influence. Officials received them as a courtesy. Many newspaper concerns received them, from the proprietor and editor-in-chief down to the typesetter, (relatives included,) under the pretense that it was an exercise of liberty of contract, for which the newspaper published the arrival and departure of trains, with an occasional

local and sometimes abbreviated plate matter. To receive them was often followed by charges of corruption; and to refuse them, by charges of demagogy. Every person conceded it to be a wrong system, and most people were advocates for its abolition, except as to the class to which he belonged. But it was abolished, and does not longer exist, and the evidence shows that as to state earnings, the passenger revenue is increased by reason thereof less than one per cent.

11. This leaves but one question for decision, and that question largely one of fact. The question is whether the traffic wholly within the State of Missouri generally referred to in the evidence as local traffic, can be carried under the freight rate statute of 1907 and the passenger fare statute of 1907 at such profit as will give a reasonable return after paying expenses upon the investment, or whether such traffic is carried at a loss or less than such reasonable profit.

Thousands of pages of testimony, taking weeks of time, have been filed. This testimony was orally presented, part to the Master, and part to the Court, accompanied with volumes of statements, reports, schedules, and tables. Every phase of every question of both debit and credit has been worked out, tabulated, and filed. These exhibits are the result of something like one year of work by the expert accountants representing both sides, as a result of their examinations of train reports, way bills, auditors' books, and of the accounts of the passenger and traffic departments of the several roads. This work required not only much time, but energy, and patience, and learning, and great skill. But each side had accountants of
416 the highest character, and possessing all of those qualifications. The four accountants, Mr. Peabody and Mr. Johnson representing the railway companies, and Mr. Taliaferro and Mr. Hamilton representing the State, impressed me after hearing them testify and being in consultation with them for ten days after the cases were submitted, that the sole purpose of their work was to exhibit the truth, differing only as to extra cost, and that difference of extra cost largely confined to the local passenger traffic, and differing as to the theory as to how the expenses between local and interstate traffic within the state should be divided. Aside from those two questions there is not the slightest variance between the testimony of the experts upon the two sides. During the ten days following the submission of the cases, they and the Court being alone, at the request of the Court they prepared a statement in each of the nine cases submitted, which have been ordered filed. To each of the nine statements is appended a certificate showing the time covered, and that such statement correctly shows the results of the various assumptions set forth therein, which certificates were signed by the four expert accountants. Seldom, if ever, is a Court under greater obligations to expert accountants representing the two sides, than the Court and all parties, the railroads and the public, owe these four gentlemen. Usually experts representing different sides do not agree to anything. Here experts representing the different sides agree to everything pertaining to the accounting, the differences only arising as to the basis.

The Court is likewise much indebted to counsel on both sides, who for four days argued these cases with a fairness, and wealth of learn-

ing, and eloquence seldom displayed at the bar. And now after the fullest investigation of the record, the Court has reached the conclusion that upon this question of fact the statutory rates fixed by either and both statutes are not remunerative. And it only remains for the Court to give the reasons for such conclusion.

And in giving these reasons, clearness is added by eliminating those things so clearly established by the evidence, or so nearly conceded in matters of law as not to be debatable.

417 1st. The unquestioned and undoubted rule is that there is a presumption both of fact and of law in favor of the validity of every legislative enactment. The railway companies have the burden of removing this presumption, and showing that the statute clearly, or as some Courts say, palpably, and others say, beyond a reasonable doubt, that the statute is invalid. In these cases the Court has recognized this rule. The authorities upon this question form a long and unbroken line, with the single exception of the majority opinion in the Pennsylvania case decided a year ago. (68 At. Rep. 676.) And that one authority is not persuasive.

2nd. All testimony and argument bearing upon the question as to what consideration the Legislature of Missouri gave to these enactments, is utterly immaterial. Much was said in argument as to the message of Governor Hughes of New York two years ago in declining to approve the two cent statute of that state. Governor Hughes had the moral courage to veto a measure of popular favor because as he believed the question had not been fully considered. But the relations of a governor to proposed legislation, and those of a Court to legislation consummated, are entirely different.

3rd. Most of laymen and many lawyers believe that the question is whether the railway company as a system is earning sufficient revenue upon the value of the property of the system. They believe that if the Burlington, Santa Fe, Wabash, or any other railroad system is earning such money as will pay all charges and expenses including taxes and interest, with reasonable dividends to the stockholders, that state rates for state business must stand. Of course no one believes this who has given the slightest attention to the question. That precise question was before, and was decided by Justice Brewer, (64 Fed. Rep. 165,) and affirmed by the Supreme Court in the Nebraska case of Smyth v. Ames, (169 U. S. 466). The only question is as to Missouri rates, less expenses properly charged against the same. And if this balance does not leave sufficient to pay a reasonable return, the law is invalid. And if the railroad system of

418 any company is earning more than a reasonable return by reason of interstate rates, which affect the people many times more than local rates, and if such interstate rates are too high, Congress either acting alone or through a Commission must make the corrections.

The Supreme Court during the present year in the case of City of New York v. Consolidated Gas Company of New York (211, U. S. —) decided that six per cent. was fair and right to be given to the owners upon the true valuation. My opinion is that while a gas plant is in some respects different from a railroad, that a railroad

property, properly built, and properly managed, should over and above expenses make a return of six per cent., per annum. And considering all the evidence, the evidence fairly shows that all of these roads were properly and economically built and are being properly and economically managed, and that after paying the expenses for maintenance and operation, that there is less than six per cent. of returns, not more than three per cent. upon any of them and as to some of them a deficit, taking the property as above stated within the State of Missouri at its fair valuation. And this is so without reference to bonds, because in no case do the bonds bear six per cent. interest. But taking the bonds into consideration, there is still not to exceed three per cent. returns, and many cases a deficit after considering all debits and credits, upon the true valuation for the state business. There is no evidence that any of the existing bonds were improperly issued either as to amounts or rates of interest. In fixing the value the Court has considered the evidence of witnesses as to the stocks and bonds outstanding, and the Court has considered the evidence of the fact that the Missouri State Board for taxing purposes has valued these properties. Of course those findings are not binding nor conclusive, but they are persuasive. But independently of stocks and bonds, and independently of what the State Board has valued these properties for taxing purposes, the evidence shows the valuations to be as recited in the findings of fact herewith filed, and to which reference will be made in the decrees.

419 It is absolutely necessary that many trains both passenger and freight do both a local and interstate business. Even the fast trains stopping at but few stations in the state carry state passengers between such stations. And the same is true as to freight trains carrying freight both in carload and less than carload lots.

The valuation of the roads has been fixed by the Court as shown by the findings of fact. The entire state and interstate earnings of each of the roads within the state is known and fixed to a certainty. The expenses are known and fixed. To apportion these expenses, must be done according to one of the two theories, and the correct theory is that according to revenue. One theory or other must be applied to both freight and passenger expenses, and the Court should not adopt the one theory as to part, and the other theory as to another. The one theory is helpful to the one side and the other theory helpful to the other side, the one theory to the one side in freight, and the other theory to the other side in passenger. But an arbitrary splitting of theories is illogical and unfair, and cannot be recognized. The court has adopted the revenue theory because a great number of the best railroad experts of the country, against a very limited number to the contrary have so testified. Every Court that has ever had this question before it in so far as I am advised by the briefs of counsel and my own independent investigation has so held in the cases hereinbefore cited of the Supreme Court of the United States; in the two cases, by two Circuit Judges of this Circuit; by three District Judges of this Circuit, and by the Supreme Court of Florida, State v. Atlantic Coast Line, (37 So. Rep. 657). And Beale & Wyman on Railroad Rates Regulation. Sec. 466, announces such as being the correct rule. The

values of the property within the state have been fixed by the Court. The entire earnings within the state, interstate and state, freight, passenger, and miscellaneous of each, have been fixed. The entire expense is known, including the extra cost of each. To ascertain whether the result is a profit, and if so what per cent., or a loss, is but a problem of primary arithmetic, as is shown by Judge Van Devanter in Arkansas Rate Cases, (163 Fed. Rep. 141). There are other methods equally simple, the resultant figures of course being
420 the same. These computations show as to the commodities covered by the freight rate statute of 1907, that two roads, the Hannibal & St. Louis, and the Burlington, allowing nothing for extra cost, there is a deficit, and with all other companies less than two per cent. But with the extra cost added, the deficit for the two companies is much greater, and the other companies show a deficit.

The passenger earnings under the two cent fare law of 1907, allowing nothing for extra cost over interstate business, give no return whatever to the Rock Island, St. Louis & Hannibal, Kansas City, Clinton & Springfield, and the Great Western. The other companies will have the following: The St. Louis & San Francisco between three and four per cent; the Santa Fe between four and five per cent; The Kansas City Southern a small fraction over two per cent; the M. K. & T. between two and three per cent; the Burlington between three and four per cent. But all this is arrived at by allowing no extra cost of service. But to add the extra cost for freight and passenger there are no earnings over expenses. This is confiscation under the Constitution.

It being a legislative act, and not a judicial one, this Court cannot fix rates. If it could, two and one-half cent passenger rates would be fixed for the stronger roads, and three for the others. But that is for the legislature acting itself with experts, such as the State employed in these cases, or through a Commission with like assistance.

In view of General Equity Rules prohibiting findings of fact, and other matters from being inserted in decrees, this opinion has been extended. And to further show how the court has considered the cases, and the various questions of fact covered by the voluminous evidence, findings of fact have been made and signed, which will accompany this opinion.

Long and laborious as the work for the Court has been, I am of the opinion that the cases have been expedited by hearing the oral testimony as provided by General Equity Rule 67. It gave the Court a much better insight into the intricacies of the cases, and
421 with a much better knowledge of the cases than could be gained by hearing exceptions to a Master's report. And I am fully compensated by the belief that I have worked out the correct conclusions, and with the knowledge that if I am in error, either as to fact or law, that the cases can be speedily heard de novo by the Supreme Court of the United States. Because I feel in all cases, and in these cases more than ever before, as Judge Sanborn said in Boatmens Bank v. Fritzlen, (135 Fed. Rep. 650, 655):

"Every conscientious judge, every thoughtful man, upon whom is laid the grave responsibility and the heavy burden of determining

the rights of his fellows, rejoices in the thought, wherever such is the case, that his decision may be reviewed, and that, if erroneous, it will not work irreparable injustice to him whom he deems it his duty to defeat."

The decrees will be for the complainants. Each party will pay the costs by such party made, except the compensation of the Master and stenographer. The half of those will be paid by complainants, and the other half by respondents. The reservation clause usual in such cases will be in the decrees.

Kansas City, Missouri, March 8th, 1909.

422 Afterwards, to wit, on the 17th day of April, 1909, a Supplemental Opinion was filed. Said Opinion is in words and figures as follows:

In the Circuit Court of the United States, Western District of Missouri, Western Division.

No. 2988. Equity.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY, Complainant,
vs.
HERBERT S. HADLEY et al., Respondents.

And Equity Cases Nos. 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004, 3006.

Supplemental Opinion.

SMITH MCPHERSON, *Judge:*

These cases are pending on a motion to modify the decrees and opinion filed March 8th, 1909.

1. The costs were taxed, the one-half to the railway companies, and the one-half to the state officers. The company being successful, it is contended that the taxable costs aggregating about eighteen thousand dollars should all be adjudged against the state officers.

In actions at law, in the absence of a tender or statutory offer to confess judgment, the costs follow the judgment. In equity cases such is the general rule, but not the invariable one. The award as to costs is discretionary.

Two things influenced the court in dividing the costs herein.

First. Defendants are officials, and as officials are representatives. They have no personal interest in the litigation. This of itself is not enough to avoid the costs, but it is to be considered. It will be presumed that the legislature will appropriate a sufficient amount to protect these officers. But this is not always done. The last legislature appropriated $40,000.00 for these cases, which was but two-thirds enough for the two years. The Master in Chancery and the lady stenographer gave a great deal of time, followed by very large, but justly owing bills, the one-half of which has been paid by the

railways, and by the state nothing with the appropriation
423 exhausted. Whether the other half is paid all depends upon what the legislature does.

Second. The more sufficient reason for dividing the costs is because of the extravagantly enormous record made in the cases. The Master gave many weeks to taking evidence, and many more weeks were given by the court in taking evidence. Both the Master and the Court were powerless to abbreviate the record, because the Supreme Court in the case of Blease vs. Garlington, 92 U. S. 1, and the Circuit Court of Appeals for this Circuit in case of Schubert vs. Woodward, 167 Fed. Rep. —, 52, have held that Trial Courts must receive in equity cases, all evidence offered that is germane to the issues. I complained, and in effect gave warning many times to the parties, but without avail, because of the prolixity of the record. Something like 15,000 pages of evidence were taken, when one-third would have been as strong a presentation of either side. Courts should impose penalties for this, and the only penalty is by way of costs. Both sides were at fault, and both sides should bear the burden. It does not follow that such a precedent will be one to plague. It is not a precedent to be followed except in cases where it ought to be followed.

2. Complaint is made because of the recital in my opinion that,

"It being a legislative act, and not a judicial one, this court cannot fix rates. If it could, two and one-half cent passenger rates would be fixed for the stronger roads, and three for the others. But that is for the legislature acting itself with experts, such as the state employed in these cases, or through a commission with like assistance.

My statement that "It being a legislative act, and not a judicial one, this court cannot fix rates," is not controverted by anyone. This being so, as of course, what I said as above is obiter dictum. But because it is dictum, is no reason whatever for not saying it, and still less a reason for now eliminating it from my opinion. The greater part of one of the greatest opinions ever written by the great Chief Justice (Marbury vs. Madison), was dictum. But even if it were
possible, who would dare to mutilate that opinion? But two
424 years since there were published two very large volumes wholly covering dictum only of the United States Supreme Court. Those dicta were and are binding on no one, but they contain much of the cream of our jurisprudence. This dictum of mine is binding on no one. It is my opinion, and will stand as of value, or of no value as the profession and informed laymen fix the value thereon. I believes it proper to say that the strong roads should have two and one-half cents per passenger per mile, and the weaker roads three cents. I could have fairly stated that the St. Louis and Hannibal, and the Kansas City, Clinton & Springfield Railroads should have four cents or more per passenger mile.

I still adhere to these views, and entertaining them, I know of no reason for not stating them, with reasons for believing it was my duty to state them. Passengers, like consumers, have rights. One of those rights is to have fares fixed reasonably low. But the term reasonable is a comparative one. It must be in proportion to what it is worth, and the better the service, the more it is worth. And the public is

entitled to have, with the right to demand, efficient service, provided always such is paid for. Much in argument was said by counsel on both sides as if an arbitrary flat rate is all that is involved, regardless of service and regardless of all other things. Whether the trains are expensive or inexpensive, daylight or night trains, through or local trains, main line or branch trains, roads through the hills of central Missouri, or the Ozarks or over the prairies, and whether the trains carry few or many passengers, are matters largely passed over as if of no importance. To me they seem of great importance. So it is as to the greatly increased cost of materials compared with ten years ago. The average fare paid per year, aside from the low excursion rates, is less than six dollars per year, commercial travelers excepted. To reduce that to four dollars, thereby saving two dollars, is of course of importance. So are other matters of importance. Aside from having efficient service to be paid for at remunerative rates, the laboring men, the employés, have rights. They have the right to be well paid for their work, in day time and night time, sunshine and storm, during the excessive heat of the summer and the rigors of winter. Their hazardous and most dangerous service entitles them to
425 remunerative compensation, which they cannot have with meagre earnings of the roads. Evidences of humanity and kindly feeling for their fellow men need not be wholly displayed toward the man who pay- six dollars per year for passenger fares. A kindlier disposition would suggest an equitable division of sympathy. Thousands and thousands of them have already been "let out" because of decreased earnings, and more are to follow, with diminished compensation for those from necessity retained. What is the truthful answer to make these men, and who is to make this answer? It is doubtful if the legislature thought this out. I decline to modify my opinion as respects this.

3. It is contended that the court was in error in its original opinion in that the penalties of the statutes render them void.

Whether rates prescribed by statute are valid or invalid, is a judicial question, and the legislature cannot prohibit the courts from passing thereon. This was so stated in the Minnesota Milk case, 134 U. S. And this cannot be done indirectly, by imposing such penalties as to terrorize the company, its officers and agents so that they do not dare to litigate the question. This was so held in ex parte Young but a year ago.

This question received but little attention from any of the counsel or the court, and was but briefly discussed by the court in the opinion.

In the Consolidated Gas case in 146 Fed. Rep., 150, Circuit Judge Lacombe held that a penalty of $1,000.00 for each charge for gas in excess of the statutory or commission rate was prohibitive and a denial of the right to go into the courts. And on the final hearing of the same case in 157 Fed. Rep., 849, 881, a like holding is made. And in the same case on appeal, the Supreme Court held a year ago that the penalties were so excessive as to be void.

The discussion by Justice Brewer speaking for the court, in the case of Cotting vs. Kansas City Stock Yards, 183 U. S., 79, 99, is to the same effect, although the question was not decided. And a like

discussion, with a like putting the question aside without a decision, is found in the Reagon case in 154 U. S.

426 And in the ex parte Young case, although the penalties were more severe than under the Missouri statutes, the question is at rest. The sole question is—Can a party be allowed to litigate a disputed question of fact as to property rights, without confiscation of all its property, and all of its agents being sent to jail, if the case is lost? Surely he can. Upon reflection and with much additional consideration, the holding now is that the section imposing penalties is void.

But this is largely an academic question, for the reason that the penalty section is easily separated from the main features of the statute. And I need not discuss the proposition that when separable, the void section does not render the entire statute void.

4. These cases as to freight were brought four years ago. Two years ago supplemental bills were filed, bringing forward the new freight rate statute, and the passenger rate statute. Upon a hearing by agreement of counsel on both sides, a temporary injunction was issued against the enforcement of the freight rate statute. The railways asked for a temporary injunction against the enforcement of the passenger rate statute. The Attorney General and his associates contested this, and were successful to the extent that the court ordered an observance of the statute for some months, until information from actual tests could be made. So that from the very inception of the case, it has been contended on the one side that the statute is invalid, and on the other side that the statute is valid. It therefore follows that this court has had jurisdiction for four years over all the parties, and over the entire subject matter of state earnings.

It is clear that this court having such jurisdiction should retain it over all the parties, and the subject matter, to the end that the decrees hereafter may be enlarged, or modified, as varying circumstances and the acts of the parties may require. Therefore the decrees should be so changed as to recite such reservations.

Kansas City, Missouri, April 17th, 1909.

427 UNITED STATES OF AMERICA, *set:*

I, Adelaide Utter, Clerk of the Circuit Court of the United States for the Western Division of the Western District of Missouri, do hereby certify that the above and foregoing is a full, true and complete copy of the record, assignments of errors and all proceedings in the cause wherein Missouri, Kansas and Texas Railway Company is complainant, and John A. Knott, et al., are defendants, on the appeal of the defendants and the cross-appeal of the complainant, as required by the stipulation of parties on file in said cause, set out on pages 365 and 366 supra.

Witness my hand as clerk and the seal of said Court. Done at office in Kansas City, Missouri, this first day of May, A. D. 1911.

[Seal of the United States Circuit Court for the Western District of Missouri, Western Division.]

ADELAIDE UTTER, *Clerk.*

Endorsed on cover: File No. 22,766. W. Missouri C. C. U. S. Term No. 690. John A. Knott, H. R. Oglesby and Frank A. Wightman, Railroad and Warehouse Commissioners, and Elliott W. Major, Attorney General of the State of Missouri, appellants, vs. The Missouri, Kansas & Texas Railway Company. File No. 22,767. Term No. 691. The Missouri, Kansas & Texas Railway Company, appellant, vs. John A. Knott, H. R. Oglesby and Frank A. Wightman, Railroad and Warehouse Commissioners, and Elliott W. Major, Attorney General of the State of Missouri. Filed June 26, 1911. File Nos. 22,766 & 22,767.

(22,768 and 22,769.)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1911.

No. 692.

JOHN A. KNOTT, H. R. OGLESBY, AND FRANK A. WIGHTMAN, RAILROAD AND WAREHOUSE COMMISSIONERS, AND ELLIOTT W. MAJOR, ATTORNEY GENERAL OF THE STATE OF MISSOURI, APPELLANTS,

vs.

THE QUINCY, OMAHA & KANSAS CITY RAILROAD COMPANY.

No. 693.

THE QUINCY, OMAHA & KANSAS CITY RAILROAD COMPANY, APPELLANT,

vs.

JOHN A. KNOTT, H. R. OGLESBY, AND FRANK A. WIGHTMAN, RAILROAD AND WAREHOUSE COMMISSIONERS, AND ELLIOTT W. MAJOR, ATTORNEY GENERAL OF THE STATE OF MISSOURI.

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI.

INDEX.

	Original	Print
Citation to railroad company	*a*	1
Citation to Knott *et al.*	*c*	1
Bill of complaint	2	3
Restraining order	15	16

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., SEPTEMBER 19, 1911.

	Original	Print
Order continuing restraining order	17	18
Appearances	21	20
Order of temporary injunction	22	21
Injunction bond	23	22
Demurrer of Knott, Rice, and Wightman, railroad commissioners	24	23
Demurrer of Herbert S. Hadley, attorney general	27	24
Demurrer of James S. Robb	30	26
Demurrer of W. F. Davis	32	27
Demurrer of Chas. M. Daily	34	28
Waiver of affidavits to demurrers	36	29
Order overruling demurrers	37	29
Joint answer of Knott, Rice, and Wightman, railroad commissioners	38	29
Answer of Herbert S. Hadley, attorney general	57	40
Joint and several answer of Chas. M. Daily *et al.*	76	52
Replication to answer of Knott *et al.*	82	55
Replication to answer of Herbert S. Hadley, attorney general	83	55
Replication to answer of C. C. Kelly *et al.*	84	56
Motion of defendants for reference to master	85	57
Motion of complainants for oral hearing	86	58
Order of reference	89	61
Motion for leave to file amended and supplemental bill	91	62
Restraining order of June 13, 1907	92	63
Restraining order of June 14, 1907	93	64
Notice of motion to amend	95	65
Order granting leave to file amended and supplemental bill	96	65
Amended and supplemental bill	98	67
Order granting leave to file amendment to bill	112	79
Amendment to bill of complaint	113	79
Acknowledgments of service of subpœna	123	85
Joint demurrer of Knott, Wightman, and Oglesby, railroad commissioners	126	87
Demurrer of Herbert S. Hadley, attorney general	131	90
Joint and several demurrer of Joseph M. Patterson *et al.*	136	94
Joint and several demurrer of F. M. Riley *et al.*	138	95
Joint and several demurrer of Charles M. Daily *et al.*	139	96
Interlocutory report of master and order thereon	141	97
Order granting leave to amend amendment to bill of complaint	143	99
Order overruling demurrers	144	99
Joint answer of John A. Knott *et al.*	145	100
Answer of Herbert S. Hadley, attorney general	147	101
Replication to answer of Knott *et al.*	155	109
Replication to answer of H. S. Hadley, attorney general	156	110
Order as to hearing	157	111
Affidavit of T. F. Wharton	158	111
Exhibits A to J—Statements	160	113
Notice of hearing	170	119
Return of special master	171	120
Orders as to hearing	172	120
Stipulation and order to abide decision in No. 3003	185	133
Complainants' requests for findings of fact	187	134
Certificate of trial judge	237	169
Order of submission	242	173

	Original	Print
Order substituting Elliott W. Major as attorney general in the stead of Herbert S. Hadley	243	174
Order as to statement of expert accountants	245	177
Order as to answers, &c.	246	177
Findings of fact	247	178
Decree	273	201
Motion to modify decree	277	203
Amended motion to modify decree	279	204
Notice of motion to modify decree	281	205
Amended decree	282	206
Declinations to join in appeal	287	209
Defendants' assignment of errors	298	216
Defendants' petition for appeal	307	225
Defendants' bond on appeal	308	226
Order granting appeal	311	227
Complainant's assignment of errors	312	228
Complainant's petition for cross-appeal	316	231
Bond on cross-appeal	317	231
Order granting cross-appeal	319	232
Order extending time to file transcript	320	233
Stipulation as to transcript	321	233
Remarks of McPherson, judge, filed June 14, 1907	323	235
Remarks of McPherson, judge, filed June 17, 1907	326	236
Remarks of McPherson, judge, filed June 17, 1907	334	242
Opinion of McPherson, judge, filed March 31, 1908	340	246
Opinion of McPherson, judge, filed March 8, 1909	349	252
Supplemental opinion of McPherson, judge, filed April 17, 1909	378	271
Certificate of clerk	383	274

a *Citation.*

THE UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Quincy, Omaha and Kansas City Railroad Company,

Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States at the City of Washington, within thirty days from the date of this writ, pursuant to an appeal duly allowed by the Circuit Court of the United States for the Western Division of the Western District of Missouri, and filed in the clerk's office of said court on the 6th day of March, A. D. 1911, in a cause wherein John A. Knott, H. R. Oglesby and Frank A. Wightman, Railroad and Warehouse Commissioners, and Elliott W. Major, Attorney General of the State of Missouri, are appellants, and you are appellee, to show cause, if any, why the amended final decree rendered against the said appellants, as in the said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Smith McPherson, Judge of the Circuit Court of the United States for the Western Division of the Western District of Missouri, this 6th day of March, A. D. 1911.

SMITH McPHERSON, *Judge.*

THE UNITED STATES OF AMERICA,
Western District of Missouri, ss:

I hereby acknowledge due service of the above citation this 6th day of March, A. D. 1911.

FRANK HAGERMAN,
Solicitor for Quincy, Omaha and Kansas City Railroad Company, Appellee.

b [Endorsed:] 2999. The Quincy, Omaha & K. C. R. R. Co. vs. John A. Knott, et al. Citation. Filed March 6, 1911. Adelaide Utter, Clerk.

c In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 2999.

QUINCY, OMAHA & KANSAS CITY RAILROAD COMPANY, Complainant,
vs.
JOHN A. KNOTT, H. R. OGLESBY and FRANK A. WIGHTMAN, Railroad Commissioners, et al., Defendants.

The President of the United States to all the defendants of record in above entitled case:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States at the city of Washington, Dis-

trict of Columbia, within thirty days from the date of this writ, pursuant to an appeal duly allowed by the circuit court of the United States for the western division of the western district of Missouri, on March 6, 1911, as a cross appeal in a case where the Quincy, Omaha & Kansas City Railroad Company, is cross appellant and you are the cross appellees, and show cause, if any, why the amended final decree rendered against the said appellant as in the said appeal mentioned should not be granted, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Smith McPherson, Judge of the Circuit Court of the United States for the Western Division of the Western District of Missouri, this March 6, 1911.

SMITH McPHERSON, *Judge.*

Due service of above citation accepted this March 6, 1911.

ELLIOTT W. MAJOR,
Attorney General;
JOHN M. ATKINSON,
Asst. Atty. General,
SANFORD B. LADD,
Solicitors for Appellees and Defendants in said cause.

d [Endorsed:] No. 2999. Q., O. & K. C. R. R. Co. v. Jno. A. Knott, et al. Citation. Filed March 6, 1911. Adelaide Utter, Clerk.

1 UNITED STATES OF AMERICA, *sct:*

Be it remembered, that heretofore, to-wit, on the 16th day of October, A. D. 1905, a bill of complaint was filed in the office of the clerk of the Circuit Court of the United States for the Western Division of the Western District of Missouri, in the cause wherein Quincy, Omaha and Kansas City Railroad Company is complainant, and John A. Knott, et al., are defendants.

Said bill of complaint is in words and figures as follows:

2 UNITED STATES OF AMERICA,
Western District of Missouri,
Western Division, ss:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 2999.

QUINCY, OMAHA AND KANSAS CITY RAILROAD COMPANY,
Complainant,
v.
JOHN A. KNOTT, JOSEPH P. RICE and FRANK A. WIGHTMAN, Railroad Commissioners of the State of Missouri; Herbert S. Hadley, Attorney-General of the State of Missouri; Charles M. Daily, William F. Davis, and James F. Robb, Defendants.

Bill of Complaint.

To the Honorable, the Judges of the Circuit Court aforesaid:

Your orator, Quincy, Omaha and Kansas City Railroad Company, brings this, its bill of complaint, against each of the above-named defendants, and thereupon avers:

I.

Your orator, Quincy, Omaha and Kansas City Railroad Company, is a railroad corporation organized and existing under the laws of the State of Missouri, with its chief office therein. It is, with its railroad, engaged in state and interstate commerce, owning and operating lines of railroad in Missouri and other states. Of the said lines, the following are, and have for a long time been owned, maintained or operated by your orator in the State of Missouri:

A railroad extending from near West Quincy, Missouri, in a general westerly direction to Kansas City, in said state, a distance of about 259.20 miles, with a branch from Trimble to Gower, a distance of about 10.47 miles.

Also, it operates a railroad commonly known as the Iowa and St. Louis Railroad, extending from the station of Summit in Appanoose County, Iowa, southerly into and through the State of Missouri to Mercyville in said State, a distance of about 52.61 miles, of which 46.61 miles are situated in said State of Missouri.

3 II.

This cause arises under the constitution and laws of the United States, for that it seeks to enjoin the enforcement and adoption as against your orator of the provisions, requirements and prohibitions in the act of the legislature of Missouri mentioned in paragraph VII hereof (hereinafter called the Act of 1905) and certain other laws of Missouri hereinafter mentioned; said acts being unconstitutional,

violative of the provisions of the constitution of the United States and the amendments thereto, and contrary to the constitution and laws of the United States, all as hereinafter more particularly stated. The matter and amount in dispute exceeds, exclusive of interest and costs, the sum or value of two thousand dollars.

III.

The defendants, John A. Knott, Joseph P. Rice and Frank A. Wightman, constitute the duly elected, qualified and acting board of railroad commissioners of the State of Missouri, and are citizens and residents respectively of Marion County, City of St. Louis, and Barry County, therein, their statutory official residence being in Cole County therein. The defendant, Herbert S. Hadley, is the duly elected, qualified and acting attorney-general of the State of Missouri, and is a citizen and resident of Cole County therein. Each of said parties is, by the law of which the act of 1905 is a part, required to do and perform the special duties hereinafter mentioned.

IV.

Refendants Charles M. Daily, William F. Davis and James F. Robb, each of whom is a citizen and resident respectively of the counties of Andrew, Buchanan and Clay, Missouri, are herein designated as shippers, each being a person engaged in shipping over your orator's road and other roads in the state to and from points therein the commodities, the rates of which are attempted to be limited by the said act of 1905. These defendants represent a class of shippers so numerous that it is impracticable to attempt to join them all, and the above named defendants are made parties hereto for the purpose of determining the rights as against your orator of all shippers under the said act of 1905.

V.

Article 4, of Chapter 12, of the Revised Statutes of Missouri, 1899, of which the Act of 1905 has become a part, made provision for the classification of railroads and freights and provision for maximum rates. Sections 1191, 1192 and 1193 thereof provide as follows:

Sec. 1191. Roads classified.—All railroads in the State of Missouri are hereby divided into three classes, to be known as class A, class B and class C. Class A shall include all through or trunk line railroads. Class B shall include all of the branch roads owned, leased or occupied by such through or trunk line railroad companies or corporations. Class C shall include all other railroads or parts of railroads owned, leased or occupied, or which may hereafter be owned, leased or occupied in this state, either wholly or in part..

Sec. 1192. Passenger charges regulated.—Any individual, company or corporation owning, operating, managing or leasing any railroad or part of a railroad in this state, in the several classifications as herein prescribed, shall be limited to a compensation per mile for the transportation of any person with ordinary baggage not exceeding

one hundred pounds in weight, as follows: In class A not exceeding three cents per mile, and in classes B and C not exceeding four cents per mile: Provided, that no such individual, company or corporation shall charge, demand or receive any greater compensation per mile for the transportation of children of the age of twelve years or under than one-half of the rate above prescribed; and, provided further, that the rates for transportation herein prescribed may be reduced, as hereinafter provided.

SEC. 1193. Freight classified.—All freights hereafter transported upon any railroad or part of a railroad in this state are hereby divided into four general classes, to be designated as first, second, third and fourth classes, and into seven special classes, to be designated as classes D, E, F, G, H, I and J. Class D shall comprise all grain in car loads. Class E shall comprise flour in lots of fifty barrels or more, and lime in lots of twenty-four barrels or more. Class F shall comprise salt in lots of sixty barrels or more, and cement, water-lime and stucco in lots of twenty-four barrels or more. Class G shall comprise lumber, lath and shingles in car loads. Class H shall comprise live stock in car loads. Class I shall comprise agricultural implements, furniture and wagons. Class J shall comprise coal, brick, sand, stone, railroad ties and cord wood and all heavy fourth-class articles in car loads; and in addition to the several articles in the said special classes shall be added other articles as and in the manner hereinafter prescribed, except in classes D, E, G and H, and all articles not before enumerated or subsequently set into said classes as hereinafter provided, shall be placed in and belong to the four general classes, to be classified by the railroad commissioners hereinafter to be provided."

Section 1194 fixes the maximum rates for the seven special classes of freight designated as classes D, E, F, G, H, I and J, respectively. The statutes of the state also provide for the election and qualification of the railroad commissioners aforesaid, and prescribe their special duties, among which special duties in relation to the adoption and enforcement of the said Act of 1905 are these: To require to be posted by each railroad company in the state in its depot or railroad station and to be filed in the office of the railroad commissioners a schedule of rates to be charged, which shall be the only schedule of rates lawfully charged and collected by said railroad company, and which in no event must exceed the maximum rates at any time fixed by law, nor those maximum rates fixed by the Act of 1905; to require to be likewise filed and published all joint tariff arrangements with other common carriers; to see that all such schedules of rates are observed by all common carriers; if and when the common carrier shall neglect or refuse for thirty days to file or publish its schedule for such said as commissioners to make out and print such schedule for such carrier, delivering to it a copy thereof, which shall be likewise posted in the depots and stations; to enforce statutory provisions imposing severe penalties for a failure to publish and file said schedule; to hear all complaints made by any person for a violation of any of said provisions of law, as well as to institute on its own motion any such complaint. The statutes of the state also especially provide for the adoption and enforcement of the provisions of the Act of 1905 by requir-

ing the prosecuting attorney of each county to prosecute any carrier violating the provisions of the law aforesaid whenever directed by the railroad commissioners, receiving for his services compensation equal to the amount allowed by law on forfeited recognizances, and the attorney general is required to assist in such prosecution and to prosecute other cases whenever directed by the railroad commissioners.

VI.

The legislature of the State of Missouri in 1903 passed an act herein called the Act of 1903, reading as follows:

SECTION 1. That chapter 12 of article 4 of the Revised Statutes of Missouri of 1899 be and the same is hereby amended by adding thereto two new sections, to be between sections 1194 and 1195 of said chapter, to be known as section- 1194*a* and 1194*b*, providing for the fixing, modifying and enforcing freight rates as follows:

SECTION 1194*a*. The board of railroad and warehouse commissioners are hereby authorized, empowered and required to fix, maintain and establish just and reasonable freight rates on all classes of freight from, to and between all points and stations upon and along all lines of railroads in this state; and said board is authorized and empowered to reduce, change or modify any and all such freight rates so fixed and established as hereinafter provided. And said board may, of its own motion, and shall, upon the sworn complaint of any shipper, mayor, councilman, alderman or trustee of any city, town or village, first giving five days' written notice to the railroad company affected, or complained against, proceed to fix, establish, modify or reduce the freight rates or charges of any such road from, to or between any and all points or stations in Missouri; and any and all orders fixing, establishing, modifying or reducing any such freight rates or charges shall be the judgment of said board and constitute the legal rates or charges that such railroad company may collect for the transportation of freight from, to and between its stations in Missouri; and said board shall, immediately upon the fixing, establishing, modifying or reducing the freight rates or charges of any railroad company, notify such railroad in writing thereof; and said railroad company shall comply with the orders and judgments of said board with reference to such freight rates or charges within ten days after such notice. And if any railroad fails, refuses or neglects to put the rates so ordered by said board into effect and operation within ten days after notice the board shall submit a certified copy of its order to the attorney general of the state with notice that such railroad (designating the same), has failed to comply therewith. And the attorney general, upon receipt thereof, shall immediately institute suit in the name of said board of railroad and warehouse commissioners against such railroad in the supreme court of the state, by mandamus or other proper remedy, to enforce said order of said board.

SECTION 1194*b*. All railroad companies doing business in this state shall, upon the request of the board of railroad and warehouse commissioners, furnish to said board copies of all its schedules of freight

rates and charges, and all other papers and documents, including bills of lading and contracts for transportation of freight affecting in any way the transportation of freight within, into and from this state. And said board shall have full power and authority to examine all officers, agents and employés of said railroad companies, and all other persons, under oath or otherwise, to procure the necessary information to make just and reasonable freight rates or charges. And to
6 ascertain if the freight rates so fixed by said board are being observed or violated. And said board shall have power to administer oaths, to issue subpœnas for persons and papers, examine witnesses and to enforce the same in like manner as the circuit courts of this state. And in the issuance and enforcement of the papers and process above the jurisdiction shall be co-extensive with the state."

There were then and there adopted sections 1194*a* and 1194*b* to become part of article 4 of chapter 12 of the Revised Statutes of Missouri, 1899, to be known as sections 1194*a* and 1194*b*, and to be inserted between sections 1194 and 1195 of the said Revised Statutes.

VII.

The legislature of the State of Missouri, at its session of 1905, passed the act herein called the Act of 1905, reading as follows:

SECTION 1. That section 1194 of the Revised Statutes of Missouri, 1899, concerning the regulation of freight charges being part of article IV, of chapter 12, entitled "Corporations, private," be and the same is hereby repealed and the following, to be known as sections 1194, 1194*a*, 1194*b*, of said Revised Statutes, be enacted in lieu thereof, so that said sections shall be collocated between existing sections 1192 and 1195 of said Revised Statutes of 1899.

SECTION 1194. No individual, company or corporation owning, operating, managing or leasing any railroad or part of railroad, designated in section 1191 as in classes A, B or C shall demand, charge or receive a greater or higher rate for carrying from initial to terminal points in this state articles named in the several classes herein designated is hereinafter provided for, namely: Class D, in car loads of 40,000 pounds, minimum weight, not exceeding five cents per one hundred pounds for the first 25 miles and not exceeding one-half cent per hundred pounds for the second 25 miles, or fractional part thereof, and not exceeding one-half cent per hundred pounds for each additional 25 miles or fractional part thereof. Class E, in car loads of 24,000 pounds, minimum weight, not exceeding 5 cents per one hundred pounds for the first 25 miles and not exceeding one-half cent per hundred pounds for the second 25 miles, or fractional part thereof, and not exceeding one-half cent per hundred pounds for each additional 25 miles or fractional part thereof. Class F, in car loads of 30,000 pounds, minimum weight, not exceeding 5 cents per one hundred pounds for the first 25 miles and not exceeding one-half cent per hundred pounds for the second 25 miles, or fractional part thereof, and not exceeding one-half cent per hundred pounds for each additional 25 miles, or fractional part thereof. Class G, in car loads of 30,000 pounds, minimum weight, not exceeding 5 cents per one hundred pounds for the first 25 miles

and not exceeding one-half cent per hundred pounds for the second 25 miles, or fractional part thereof, and not exceeding one-half cent per hundred pounds for each additional 25 miles, or fractional part thereof. Class H, in car loads in common cars, measuring inside from 29 feet to and including 30 feet and 6 inches in length (to be known as standard cars), not exceeding $6.00 per car load for the first 25 miles, and not exceeding $3.00 per car load for the second 25 miles, or fractional part thereof, and not exceeding $2.00 per car load for each additional 25 miles, or fractional part thereof, of over twelve miles. For the carriage of any of the articles comprising class H in cars of other lengths for the distance above specified the following percentages of the foregoing rates per car load shall not be exceeded, namely: In cars of length less than 29 feet, 94 per cent; in cars of length over 20½ feet to and including 32 feet, 104 per cent; in cars of length over 32 feet to and including 33 feet and 9 inches, 107 per cent; in cars of length over 33 feet and 9 inches to and including 36 feet, 110 per cent; in cars of length over 36 feet to and including 38 feet, 113 per cent; in cars of length over 38 feet to and including 40 feet, 116 per cent; in cars of length over 40 feet to and including 42 feet, 125 per cent; in cars of length over 42 feet to and including 44 feet, 135 per cent; in cars of length over 44 feet, 140 per cent of the rates herein specified for cars of the standard length of 29 feet to and including 30 feet and 6 inches shall not be exceeded. All of the foregoing lengths to be taken by inside measurements. Class I, in car loads of 20,000 pounds, minimum weight, not exceeding $14.00 per car load for the first 25 miles and not exceeding $2.00 per car load for the second 25 miles, or fractional part thereof, and not exceeding $2.00 per car load for each additional 25 miles, or fractional part thereof. In computing the rate of freight according to the provisions of this article the distance shall be computed from the point where it is received to the point of destination in the state, notwithstanding it may pass from one road to another.

7

SECTION 1194*a*. That for the violation of the foregoing sections the railroad company so offending shall forfeit and pay to any person thereby affected the freight rate charged, demanded or received in excess of the rates prescribed in said section, together with all actual damages caused thereby, to be recovered in any court having jurisdiction thereof by the existing law. And (if) plaintiff in such action recover judgment therein the court shall treble the same and the plaintiff shall, on motion, be allowed a reasonable attorney's fee for bringing the action.

SECTION 1194*b*. All acts and parts of acts, and all rules and regulations, freight schedules, classifications and groupings by railroad companies or the railroad and warehouse commissioners of this state in conflict with the provisions of this act are hereby repealed and declared void.

Approved April 15, 1905.

Said act will, under the constitution and laws of the State of Missouri, take effect on the 16th day of June, 1905, which will be ninety days after the adjournment of the session of the legislature at which

the act was passed. The rates now being lawfully charged by your orator for the transportation of freight of the character mentioned in the said act are shown in schedules now on file with the railroad commissioners and posted in your orator's depots and railroad stations, and are in excess of the maximum rates fixed in said act of 1905, so that when said act becomes effective, if permitted to be enforced, it will require such a reduction in your orator's said rates as to make imperative a change in the said schedule, which change your orator does not propose to make, and cannot make without jeopardizing its property interests. The railroad commissioners propose and threaten to, and will, unless enjoined herein, enforce the special provisions of the statute of the state for the enforcement of said Act of 1905 by entering upon investigations, both upon its own instigation and upon complaint of shippers, and by determin-
8 ing and adjudging your orator's present schedule of rates posted and filed as aforesaid to be unreasonable, unjust and extortionate for the sole reason that the said rates are higher than those authorized by the said Act of 1905, and by requiring under the pain of large penalties, threatened to be enforced, your orator to file and publish a new schedule fixing rates not in excess of those mentioned in said Act of 1905. Besides which, said railroad commissioners propose, as specially required by law, to file, post and publish as your orator's said schedule the maximum rates fixed in said act, if and when your orator refuses so to do, and they propose to direct each of the prosecuting attorneys in each of the counties through which the line of your orator runs to prosecute and recover of your orator the large and excessive penalties provided by law, and to direct the defendant, the attorney general, to assist in such prosecutions, and to direct the defendant attorney general to prosecute your orator and recover the penalties provided by law for its failure to comply with the orders which the railroad commissioners from time to time make in investigations instituted for the enforcement of said Act of 1905 by compelling your orator to adopt rates in accordance therewith. Said prosecuting attorneys and attorney general will conduct said prosecutions and seek to recover said penalties.

The shippers along the line of your orator's railroad are very numerous and are daily engaged in making and receiving shipments to and from points in Missouri of freight of the special classes designated in the Act of 1905, so that unless restrained by this court there will be instituted by them a multiplicity of suits to recover of your orator treble damages sustained, together with attorneys' fees in each case. Said parties are so numerous, and the causes of action which will accrue so many, if the Act of 1905 be enforced, that it is not practicable to make more than part of said shippers defendants hereto, but all other shippers in the counties in the state where your orator's lines of road extend are likewise interested with those named as defendants herein, so that such as are named as such defendants should defend for all those having like interest, any such omitted party being permitted to become a defendant herein if so desired, to the end that all persons having a like interest will be

bound by the decree to be entered herein, and the court have an opportunity to determine once for all the validity of said Act of 1905.

VIII.

The said Act of 1905 is unconstitutional and inoperative and of no force or effect for each of the following reasons:

(*a*) It prescribes rates unreasonable in amount which, if enforced, will confiscate the property of your orator, require it to carry the commodities specified therein, and each of them, and to conduct its entire freight and other local traffic in the State of Missouri, not only without profit or reward, but for a sum which will not pay the actual operating expenses necessarily incurred in performing said service, all of which is contrary to and violative of the provisions of the constitution of the United States, and particularly of the fourteenth amendment thereto, prohibiting the taking of property without due process of law, and guaranteeing to all persons the equal protection of the laws.

(*b*) It is discriminatory, as alleged in paragraphs XI and XII hereof, whereby it is violative of said amendment to the constitution of the United States.

9 (*c*) It provides that in computing the rate of freight the distance shall be computed from the point where it is received to the point of destination in the state, notwithstanding it may pass from one road to another. This impairs your orator's freedom of contract and fixes a rate for it based upon carriage over the line of another road whereby the provisions of the federal constitution and the amendments thereto hereinbefore referred to are violated, and the freedom of contract, guaranteed by section 4, article 2 of the state constitution, denied.

(*d*) It attempts to adopt and create as part of article 4 of chapter 12 of the Revised Statutes of Missouri, 1899, two sections called sections 1194*a* and 1194*b*, when the Act of 1903 adopted sections so numbered as part of the same article and chapter. There was by the Act of 1905 no repeal or attempted repeal of said Act of 1903. The Act of 1905 cannot be treated as amendatory to the Act of 1903 because it is insufficient since it does not in any wise comply with the provisions of section 34, article 4, of the constitution of the state, providing as follows:

SECTION 34. Act amended, how.—No act shall be amended by providing that designated words thereof be stricken out, or that designated words be inserted, or that designated words be stricken out and others inserted in lieu thereof; but the words to be stricken out, or the words to be inserted, or the words to be stricken out and those inserted in lieu thereof, together with the act or section amended, shall be set forth in full as amended."

The act is therefore invalid because the law as it now stands is uncertain, there being two separate enactments upon two different subjects designated as sections 1194*a* and 1194*b* of article 4 of chapter 12 of the Revised Statutes of 1899.

(*e*) It provides in section 1194 that no individual, company or corporation owning, operating, managing or leasing any railroad or

part of railroad designated in section 1191 as in classes A, B, or C shall demand, charge or receive a greater or higher rate for carrying from initial to terminal points in this state articles named in the several classes therein designated than as therein provided for, but it also provides in section 1194*a* that the penalty for a violation of the act shall be enforced only against railroad companies, thereby exempting individuals from such penalties. This is a discrimination between individuals and companies, and denies to your orator the equal protection of the laws guaranteed it by the fourteenth amendment to the Constitution of the United States.

IX.

Your orator has in its entire system about 306 miles of railroad, and in acquiring and constructing said system there has been expended large sums of money for right of way, ties, iron, grading, bridging, equipment, and for all the facilities and appliances necessary for the operation of a railway, and it has, at great cost, acquired terminals and terminal facilities at various cities and towns to and through which its system extends. All of said railroad, including that portion in Missouri, was constructed and fairly acquired at a fair and reasonable cost; it was judiciously located, and has at all times been properly and economically operated. Its capitalization in bonds and stocks aggregate $23,000 per mile for its entire system, which capitalization is fair and reasonable and less than the amount for which said road could be reproduced. All the lines in Missouri secure and receive a due, fair and reasonable proportional benefit of the entire system, and the value of the property in Missouri as well as its capacity for serving the public, is proportionately increased and augmented thereby. The cost of constructing and replacing said railroad in Missouri and providing and furnishing its equipment and terminals, as well as constructing and replacing its entire system today, would largely exceed the original cost. Upon the value of the property of your orator, it has only been able in the past to have any kind of returns, because it was operated as part of a whole system. The said rates fixed in said Act of 1905 are unjust, unfair and unreasonable. The charges now made by your orator for the transportation of passengers and freight in the other states through which its lines extend, and upon its interstate traffic are just and reasonable, and if a corresponding reduction, or even a much smaller reduction should be made upon its interstate traffic, its earnings would be reduced below a sum sufficient to pay its operating expenses and taxes and maintain its said lines of railroad, and no reward or profit whatever would be left to your orator as compensation for its services as common carrier upon its railroad.

X.

The rates now charged by your orator for state shipments of the classes of freight mentioned in the Act of 1905 are in most instances in excess of the maximum therein fixed. If, for the the classes of freight mentioned in the Act of 1905, charges should be by your

orator made at the maximum rates therein fixed for state shipments, your orator would be required to do such business not only without profit, but at a loss and without any return upon its investment in this state. Such rates in said Act of 1905 mentioned are, considered separately and as a whole, unjust, unreasonably low, confiscatory in their nature and will not make any return upon the investment in the property of your orator in this state. Taking the gross receipts of all the state business of whatsoever kind which your orator does, can or will do in Missouri when charging the maximum rates fixed by the Act of 1905 for the classes of freight therein mentioned, and deducting from the total receipts the cost of doing such business in the state, there will not be sufficient to pay operating expenses, and there will not be left any sum as profit or as return upon the value of the property of your orator devoted to the use of such business in the state.

The present schedule of rates published, charged and maintained by your orator for the transportation of property, between points on its said lines in the state of Missouri, is lawful, just and reasonable to the public, has been in effect under the sanction of or as prescribed by the Railroad Commissioners in performing their duty under the law to require all carriers subject to their jurisdiction to charge, publish and collect reasonable and just rates and fares, and has been adjusted with reference to the business and commercial necessities of the people of Missouri so that all of said commodities shall and do move freely over the lines of your orator, and the freight of different kinds has been classified for many years as reasonably required by the difference in the cost of transportation, size, value and
11 other circumstances bearing thereon.

Your orator further shows that its present rates on all commodities locally transported between points in said state are not now nor have they for many years past been remunerative to nor afforded your orator a fair and reasonable return for its services in that behalf and upon the value of its property employed therein. The cost of doing the business local to the state of Missouri is at least three times the average cost and expense of transporting its entire traffic within the state. Local traffic is usually handled upon local trains, which receive and deliver freight at each station, so that they do not have a full train load for any part of the journey. Additional fuel and time are consumed in switching and for other obvious reasons the cost of handling the local traffic where the average haul is short is much greater than for the through business which is done in train loads and with greater economy in other respects. The receipts from the local business are little in excess of the average receipts for the transportation of all its traffic, so that said local business is now performed at an actual loss, yet that your orator will now be compelled to so reduce its rates upon the articles and commodities embraced in said act as therein required as to lose a further very large sum, computed at $18,022.89, or 34 per cent upon the actual receipts of your orator for the transportation of the commodities covered by the said act for the calendar year 1904 in case said act had been in effect during said year. The said railroads of

your orator in the state of Missouri have been economically, constructed, maintained and operated. The receipts from its entire local business, if said act is enforced, will be so reduced that not only will your orator be unable to save a fair return upon the value of its property, but it cannot pay under said rates the actual cost and expense of maintaining and keeping in proper repair and condition its said railroads and equipment in the state of Missouri, so as to properly perform its duties to the public and of handling and transporting its traffic local to the state of Missouri. For the year ending June 30, 1904, its gross earnings from all sources were $775,577.31. Operating expenses and taxes were $783,249.61, leaving a deficit of $7,672.30, and for many years the said roads have not earned enough to pay any return to its stockholders.

The year 1904 was one of large volume of traffic upon your orator's roads in comparison with preceding years and was greater than it is reasonable to anticipate in the near future. The proposed reduction in the rates upon the commodities embraced by the Act of 1905 will not increase the volume of traffic nor the earnings therefrom, but will diminish the earnings for the future to the full extent stated or more.

Your orator further shows that it is advised that under the law the reasonableness of rates prescribed by a state for the transportation of property between points within its territory must be determined solely without reference to its interstate business, or the profits derived therefrom, but it avers that irrespective of such fact it will be wholly unable to make up the loss of revenue caused by said act by increasing its rates on interstate traffic, or on the other articles of local traffic other than those named in said act.

Your orator submits that while it having regard to its future interest may propose to carry a commodity for less than cost and a fair profit, yet the legislature cannot compel it to do so, which will be the effect of the act in question.

Your orator further shows that the provision in said Act of 1905 that in computing the distance upon which said maximum
12 rates shall be based, the whole distance over which a shipment is transported in the state shall be considered, notwithstanding it may be over the roads of several companies, is invalid in that such provision will operate to reduce rates upon through shipments so that they are still more unreasonable, confiscatory and unjust than in the case of a shipment between points upon a single railroad; said provision makes a reduction in rates upon interline shipments that is arbitrary, discriminatory, and not based upon any just difference in the cost to the carriers or other circumstances; requires the carriers concerned in a through shipment to enter into involuntary contractual relations in respect to such shipment and the division of the through rate, and does not fix any method for ascertaining the proportion of the through rate that each carrier shall receive, so that said provision is too vague and uncertain to be enforced; wherefore it, as the whole of said Act of 1905, is in conflict with the constitutional provisions hereinbefore mentioned.

XI.

There are in this state carrying therein the classes of freight mentioned in said act, and hence affected thereby, the following companies owning or operating lines of railroad:

Missouri Pacific Railway Company; Wabash Railroad Company; St. Louis and San Francisco Railroad Company; St. Louis, Iron Mountain and Southern Railway Company; Missouri, Kansas and Texas Railway Company; St. Joseph and Grand Island Railway Company; Chicago, Rock Island and Pacific Railway Company; Chicago, Milwaukee and St. Paul Railway Company; Chicago and Alton Railway Company; St. Louis Southwestern Railway Company; Kansas City Southern Railway Company; Atchison, Topeka and Santa Fe Railway Company; Chicago, Burlington & Quincy Railway Company; St. Louis and Hannibal Railway Company, and others.

Each and all of said companies claim that the maximum rates fixed by said Act of 1905 are confiscatory in their nature, and if charged would result in said company doing its state business without any profit, which, as a fact, is true. Each of said companies has filed or will at once file a bill similar to that now presented by your orator. Even if in this cause it should be held that such maximum rates should be valid as against your orator, yet, as a matter of fact, same are unreasonably low as against each of said other companies, and will not permit either of said companies to make a profit upon its state business, and therefore said act is invalid as against said company. This being true, the act, even if held valid as to your orator, is unconstitutional, because it would thereby become discriminatory in that it would not apply alike to all persons or corporations operating railroads in this state, whereby the provisions of the Constitution of the United States, and the amendments thereto hereinbefore mentioned are violated.

XII.

Said Act of 1905 fixes and establishes maximum rates which are unjust, unreasonable and unconstitutional in this: The cost of transporting live stock is greater than that of any other commodities in which a reduction is made, yet said act fixes the rate thereon much less than on salt, cement, lumber, lath and shingles. The different articles transported on your orator's railway have been arranged in classes according to cost of carriage, price, risk of injury,
13 bulk volume of traffic and other circumstances well understood, and have remained in substantially the same classes for many years, which has been recognized, approved and enacted into law by the statutory classification in effect in Missouri since 1893, and as required by its railroad commission. The unequal, partial, arbitrary reduction in rates upon articles affected by said Act of 1905 as compared with other commodities and between the different commodities themselves included in said act not only works an injustice between the shippers, producers, manufacturers of the State of Missouri and deprives them of their property without due process of law and denies them the equal protection of the laws, but likewise oper-

ates to deprive your orator of its property without due process of law, and denies it the equal protection of the laws in that the legislature, having established maximum rates of charges for the transportation of all kinds of property, which are presumably fair and reasonable, now attempts to further regulate the affairs of your orator and to require it to discriminate in favor of certain persons and shippers, and to give them a right of transportation for a less rate than the general rate heretofore fixed by law or than is just and reasonable in view of the cost to the carrier or the value of the service rendered to the shipper.

In consideration whereof, and forasmuch as your orator is remediless in the premises, and by the strict rules of the common law can only have relief in a court of equity, where matters of this kind are properly cognizable and relievable, your orator prays: First, that the said act of the legislature of Missouri set forth in paragraph VII of this bill, and for convenience called the Act of 1905, be declared unconstitutional, unenforcible and not binding upon your orator. Second, that the defendants, John A. Knott, Joseph P. Rice and Frank A. Wightman, as railroad commissioners of the State of Missouri, their successors in office, agents and servants, be temporarily and permanently enjoined and restrained from taking any step to put in force the maximum rates mentioned in said Act of 1905; from requiring your orator to post same at any place or file same with them; from receiving a schedule thereof to be filed with them; from taking or making out, or printing or delivering any schedule of rates for your orator containing the maximum rates fixed by said act; from instituting or permitting any investigation of any complaint that any rate is unreasonable, extortionate or unjust because higher than the maximum rate fixed by said Act of 1905; from directing the attorney general of the state or any prosecuting or other attorney therein to prosecute or assist in prosecuting your orator, directly or indirectly, for any failure to file the schedule adopting the said maximum rates, or for any failure to recognize, adopt or comply with said Act of 1905. Third, that Defendant Herbert S. Hadley, as attorney general, and all other prosecuting attorneys in the same class and affected by this bill, be temporarily and permanently enjoined and restrained from prosecuting or assisting in the prosecution of any suit or action against your orator to enforce against it in any action, directly or indirectly, any penalty in any wise dependent or based upon the failure of your orator to recognize and abide by the said Act of 1905. Fourth, that the defendants, Charles M. Daily, William F. Davis and James F. Robb, and all other shippers affected by this proceeding be temporarily and permanetly enjoined and restrained from instituting any action under or taking any steps to collect any penalties or damages for the alleged violation of said Act of 1905. Fifth, that your orator have such other and further relief as may be just and equitable.

14 And may it please Your Honors to grant unto your orator a writ of subpœna of the United States of America, issuing out of and under the seal of this Honorable Court, directed to the said John A. Knott, Joseph P. Rice and Frank A. Wightman, railroad

commissioners of Missouri; Herbert S. Hadley, attorney general of the State of Missouri; William F. Davis, Charles M. Daily and James F. Robb, commanding them and each of them on a day certain therein to be named and under a certain penalty, to be and appear before this Honorable Court, then and there answer, but not under oath (such oath being expressly waived), all and singular the premises, and to stand to, perform and abide by such order, direction and decree as may be made against them in the premises, and that pending the final hearing of this cause a temporary restraining order may issue enjoining said defendants and each of them as prayed herein. And your orator will ever pray, etc.

QUINCY, OMAHA & KANSAS CITY
RAILROAD COMPANY,
By W. G. BRIMSON,
Its General Manager.

J. G. TRIMBLE, and
O. M. SPENCER,
Solicitors for Complainant.
E. M. SHELTON, and
FRANK HAGERMAN,
Of Counsel.

STATE OF MISSOURI,
County of Jackson, ss:

I, W. G. Brimson, upon oath say, I am General Manager of complainant in above entitled bill, and as such officer have charge of the traffic operations of said Company and the matters and things mentioned in said bill, which I have read. I know the contents thereof, and the same are true of my own knowledge, except as to the matters therein stated upon information and belief, and as to those matters I believe them to be true.

W. G. BRIMSON.

Subscribed and sworn to before me this 13 day of June, 1905.

L. A. IRWIN,
Notary Public.

[SEAL.]

My commission expires —— —, 190–.

15 Afterwards, towit, on the 16th day of June A. D. 1905, a restraining order was filed and entered herein.
Said restraining order is in words and figures as follows:—

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 2999.

QUINCY, OMAHA AND KANSAS CITY RAILROAD COMPANY, Complainant,

vs.

JOHN A. KNOTT, JOSEPH P. RICE and FRANK A. WIGHTMAN, Railroad Commissioners of the State of Missouri; Herbert S. Hadley, Attorney General of the State of Missouri; Charles M. Daily, William F. Davis, and James F. Robb, Defendants.

Restraining Order.

The original bill of complaint having been this June 16, 1905, by the solicitors for complainant duly presented, and the court being fully advised in the premises, orders and decrees: Complainant's application for temporary injunction herein is set down for hearing at the United States Circuit Court room in Kansas City, Missouri, on June 26, 1905, at 10 o'clock a. m., or as soon thereafter as it is convenient for the court to hear the same.

In the meantime, and until the further order of court herein, each and all of the above named defendant railroad commissioners, their agents, servants and successors, are restrained from taking any steps to put in force the maximum rates mentioned in the act of the legislature of the State of Missouri, approved April 15, 1905, and entitled "An Act, entitled 'An act to amend chapter 12 of the Revised Statutes of Missouri, revision of 1899, entitled "Corporations, private," by repealing section 1194 of said Revised Statutes, being part of article IV of said chapter concerning railroad classification—charges—commissioners, and to enact in lieu thereof the following new sections providing for the regulation of freight charges by railroads and the recovery of penalties for the violation thereof' "; from requiring complainant to post said maximum rates at any place, or to file same with them; from requiring a schedule thereof to be filed with them; from taking or making out, or printing or delivering any schedule of rates for complainant containing the maximum rates fixed by said act; from instituting any investigation of any complaint that any rate is unreasonable, extortionate or unjust because higher than the maximum rate fixed by said act; from directing the attorney general of the state, or any prosecuting attorney therein to prosecute or assist in prosecuting complainant directly or indirectly for any failure to file a
16 schedule adopting said maximum rates; or for any failure to recognize, adopt or comply with said act.

And in the meantime, and until the further order of court herein, the above named attorney general and his assistants and successors are restrained from bringing any suit or action against complainant to enforce against it, directly or indirectly, any penalty in anywise

dependent or based upon the failure of complainant to recognize or abide by the said act of the legislature.

And in the meantime and until the further order of court herein, the defendants John A. Knott, Joseph P. Rice, and Frank A. Wightman, Railroad Commissioners of the State of Missouri; Herbert S. Hadley, Attorney General of the State of Missouri; Charles M. Daily, William F. Davis and James F. Robb, and all other shippers affected by this proceeding, are restrained from instituting any action, or taking any steps to collect any penalties for the alleged violation of said act of 1905.

SMITH McPHERSON *Judge.*

17 Afterwards, to-wit, on the 27th day of June, 1905, the following order continuing Restraining Order was filed and entered of record:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 2988.

ST. LOUIS AND SAN FRANCISCO RAILROAD COMPANY, Complainant,

vs.

HERBERT S. HADLEY, Attorney General of the State of Missouri, and Joseph P. Rice, John A. Knott, and Frank A. Wightman, Railroad Commissioners of the State of Missouri, et al., Defendants.

No. 2989.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, Complainant,

vs.

SAME, Defendants.

No. 2990.

THE ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, Complainant,

vs.

SAME, Defendants.

No. 2991.

THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY, Complainant,

vs.

SAME, Defendants.

No. 2992.

THE ST. LOUIS, KANSAS CITY AND COLORADO RAILWAY COMPANY, Complainant,

vs.

SAME, Defendants.

18

No. 2993.

THE KANSAS CITY SOUTHERN RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

No. 2994.

THE ST. LOUIS & HANNIBAL RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

No. 2995.

THE MISSOURI PACIFIC RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

No. 2996.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

No. 2997.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

No. 2998.

CHICAGO, BURLINGTON & QUINCY RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

No. 2999.

QUINCY, OMAHA AND KANSAS CITY RAILROAD COMPANY, Complainant,
vs.
SAME, Defendants.

19

No. 3000.

THE WABASH RAILROAD COMPANY, Complainant,
vs.
SAME, Defendants.

No. 3001.

THE ST. JOSEPH & GRAND ISLAND RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

No. 3002.

KANSAS CITY, CLINTON & SPRINGFIELD RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

No. 3003.

CHICAGO GREAT WESTERN RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

No. 3004.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

No. 3006.

THE CHICAGO & ALTON RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

Order.

The application of complainants in above cases for temporary injunction coming on for hearing, this June 27th, 1905, complainants appearing by Frank Hagerman, their solicitor, and the Attorney General in person. At the request of the latter it is ordered that the said application be continued till July 8, 1905, and until further order of court the restraining orders heretofore issued shall
20 continue in force.

(Signed) JNO. F. PHILIPS,
(Signed) SMITH McPHERSON, *Judges.*

21 Thereupon a copy of said restraining order was duly issued, and the same was returned and filed on the 8th day of July, 1905, with the following endorsement:

Received copy of foregoing restraining order this — day of June, 1905, and the undersigned defendants enter their appearances in said case as of the August, 1905, rules, and authorize the Att'y General of the State of Mo. to represent me in this cause.

CHARLES M. DAILY.
W. F. DAVIS.

I hereby acknowledge receipt of a copy of the foregoing restraining order this 26th day of June, 1905, and hereby enter my appearance in said cause as of the August, 1905, rules, and authorize

the Attorney General of the State of Missouri to represent me in said cause, all done upon the condition, and with the understanding, that I am in no way to be held liable for any costs incurred or attorney's fee, by reason of this acknowledgment and entry of appearance.

JAMES S. ROBB.

Improperly named in said order as James F. Robb.

22 Afterwards, to-wit, on the 12th day of July, 1905, the following order continuing restraining order was filed and entered of record, to-wit:—

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 2999.

QUINCY, OMAHA & KANSAS CITY RAILROAD CO., Complainant,
vs.
HERBERT S. HADLEY, Attorney General; JOSEPH P. RICE, JOHN A. Knott and Frank A. Wightman, Railroad Commissioners, et al., Defendants.

Order.

This cause came on for hearing this 12th day of July, 1905, upon complainant's application for temporary injunction. The complainant, the attorney general and the defendant railroad commissioners appeared by counsel; the other defendants having been notified of the hearing; and the court being fully advised in the premises, orders and adjudges:

1. The restraining order heretofore issued herein shall continue and remain in force as a temporary injunction.

2. The complainant shall, on or before the 25th day of July, 1905, file herein an injunction bond in the sum of Ten Thousand dollars, to be approved by a judge or a clerk of this court, the defendants consenting to accept the individual bond of the complainant, conditioned to pay, in case said injunction be dissolved, all damages ascertained herein to have been sustained by the defendants or any of them, or any person becoming a defendant herein.

(Signed) JNO. F. PHILIPS, *Judge.*

23 Afterwards, to-wit, on the 22nd day of July, 1905, the Injunction Bond was approved and filed. Said Injunction Bond is in words and figures as follows, to-wit:—

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. —.

—— ——, Complainant,
vs.
HERBERT S. HADLEY, Attorney General; JOSEPH P. RICE, JOHN A. Knott and Frank A. Wightman, Railroad Commissioners, et al., Defendants.

Injunction Bond.

Know all men by these Presents, That the above complainant is held and firmly bound to above named defendants in the penal sum of Ten Thousand dollars ($10,000) well and truly to be paid in lawful money of the United States, for the payment of which it binds itself, its executors, administrators, successors and assigns.

This bond is made upon these conditions:

Whereas, the Court in above entitled cause made an order on July 12, 1905, granting a temporary injunction.

Now if said obligor pays, in case said injunction be dissolved, all damages ascertained herein to have been sustained by the defendants or any of them, or any person becoming a defendant herein then this obligation to be void; otherwise in force and effect.

Witness the hand and seal of said party this July —, 1905.

QUINCY, OMAHA & KANSAS CITY RAILROAD COMPANY,
[SEAL.] By GEO. F. BAKER, JR., *Its President.*

Attest:
SAMUEL C. MILLER,
Secretary.

The foregoing bond is approved this 22 day of July, 1905, the appearing defendants waiving the necessity of any surety signing the bond. ADELAIDE UTTER, *Clerk.*

24 Afterwards, towit, on the 7th day of August, A. D. 1905, the joint demurrer of John A. Knott et al., was filed.

Said demurrer is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 2999.

QUINCY, OMAHA AND KANSAS CITY RAILROAD COMPANY, Complainant,

vs.

JOHN A. KNOTT, JOSEPH P. RICE and FRANK A. WIGHTMAN, Railroad Commissioners of the State of Missouri; Herbert S. Hadley, Attorney General of the State of Missouri; Charles M. Daily, William F. Davis, and James F. Robb, Defendants.

The Joint Demurrer of John A. Knott, Joseph P. Rice and Frank A. Wightman, Railroad Commissioners of the State of Missouri, Three of the Above-named Defendants, to the Bill of Complaint of The Quincy, Omaha and Kansas City Railroad Company, the Above-named Complainant.

These defendants, respectively, by protestation, not confessing or acknowledging all or any of the matters or things in the said bill of complaint contained, to be true, in such manner and form as the same are therein and thereby set forth and alleged, demur to the said bill, and for causes of demurrer show:

1. That it appears by the complainant's own showing by the said bill, that it is not entitled to the relief prayed by said bill against these defendants, or either of them.

25 2. That said bill of complaint of the complainant is wholly without equity.

3. That it does not appear from said bill of complaint that charges for the transportation, between points within this State, of such articles of freight, maximum rates for the transportation of which are not fixed by said Act of 1905, might not or could not have been established by the complainant, if it had chosen to make any effort to do so, or by said Board of Railroad Commissioners, if it had been permitted by the complainant to do so, at such rates as would have been reasonable and just, both to the complainant and to the public, observance of which and of the provisions of the Act of 1905, in the transportation by complainant of its entire intra-state traffic, would, as a whole, have rendered to the complainant a fair and reasonable profit for the service of transporting the same. The complainant has made no effort or attempt to readjust its schedules of freight rates, as a whole, with a view of complying with the requirements of said Act of 1905, nor has it afforded to the said Board of Railroad Commissioners any opportunity, on its part, of making such effort, but, on the contrary, by filing the bill of complaint herein on the day said Act of 1905 took effect, and obtaining the restraining order herein, before said Board of Railroad Commissioners could, by any possibility, have taken any action in the direction of establishing freight rate schedules for intra-state traffic, which, considered as a

whole, would produce a reasonable compensation to the complainant for its service, has prevented said Board from making any such effort.

26 4. That said bill of complaint is deficient for want of certainty in its averments, in this, that it fails to show the amount of the complainant's gross annual income from the operation of its lines of railroad in the State of Missouri, in transporting intra-state traffic, or the amount of its operating and maintenance expenses in said State in connection therewith, for any year prior to the passage and approval of said Act of 1905.

Wherefore, and for divers other good causes of demurrer appearing on said bill, these defendants demur thereto, and they pray the judgment of this honorable Court whether they shall be compelled to make further or any answer to the said bill; and they humbly pray to be hence dismissed with their reasonable costs in their behalf sustained.

HERBERT S. HADLEY,
Attorney General;
JOHN KENNISH,
SANFORD B. LADD,
Solicitors for Defendants.

SANFORD B. LADD,
Of Counsel.

I hereby certify that the foregoing demurrer is, in my opinion, well founded in point of law.

SANFORD B. LADD,
Of Counsel for Defendants.

27 Afterwards, to-wit, on the 7th day of August, 1905, the demurrer of Herbert S. Hadley, Attorney General, was filed. Said demurrer is in words and figures as follows, to-wit:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 2999.

QUINCY, OMAHA AND KANSAS CITY RAILROAD COMPANY, Complainant,
vs.
JOHN A. KNOTT, JOSEPH P. RICE and FRANK A. WIGHTMAN, Railroad Commissioners of the State of Missouri; Herbert S. Hadley, Attorney General of the State of Missouri; Charles M. Daily, William F. Davis and James F. Robb, Defendants.

The Demurrer of Herbert S. Hadley, Attorney General of the State of Missouri, One of the Above-named Defendants, to the Bill of Complaint of The Quincy, Omaha and Kansas City Railroad Company, the Above-named Complainant.

This defendant, by protestation, not confessing or acknowledging all or any of the matters or things in the said bill of complaint con-

tained, to be true, in such manner and form as the same are therein and thereby set forth and alleged, demurs to the said bill, and for cause of demurrer shows:

1. That it appears by the complainant's own showing by the said bill, that it is not entitled to the relief prayed by said bill, or any relief whatever, against this defendant.

2. The said bill of complaint of the complainant is wholly without equity.

3. That it does not appear from said bill of complaint that charges for the transportation, between points within this
28 State, of such articles of freight, maximum rates for the transportation of which are not fixed by said Act of 1905, might not or could not have been established by the complainant, if it had chosen to make any effort to do so, or by said Board of Railroad Commissioners, if it had been permitted by the complainant to do so, at such rates as would have been reasonable and just, both to the complainant and to the public, observance of which and of the provisions of the Act of 1905, in the transportation by complainant of its intra-state traffic, would, as a whole, have rendered to the complainant a fair and reasonable profit for the service of transporting the same. The complainant has made no effort or attempt to readjust its schedules of freight rates, as a whole, with a view of complying with the requirements of said Act of 1905, nor has it afforded to the said Board of Railroad Commissioners any opportunity on its part, of making such effort, but, on the contrary, by filing the bill of complaint herein on the day said act of 1905 took effect, and obtaining the restraining order herein, before said Board of Railroad Commissioners could, by any possibility, have taken any action in the direction of establishing freight rate schedules for intra-state traffic, which, considered as a whole, would produce a reasonable compensation to the complainant for its service, has prevented said Board from making any such effort.

4. That this defendant is not a proper party defendant to the bill of complaint.

Wherefore, and for divers other good causes of demurrer appearing on said bill, this defendant demurs thereto, and he prays the judgment of this Honorable Court whether he shall be compelled to make further answer, or any answer, to the said bill; and he humbly prays to be hence dismissed with his reasonable costs in his behalf sustained.

HERBERT S. HADLEY,
Attorney General;
JOHN KENNISH,
SANFORD B. LADD,
Solicitors for Defendants.

29 SANFORD B. LADD,
Of Counsel.

I hereby certify that the foregoing demurrer is, in my opinion, well founded in point of law.

SANFORD B. LADD,
Of Counsel for Defendant.

30 Afterwards, to-wit, on the 7th day of August, 1905, the demurrer of James S. Robb to the Bill of Complaint was filed. Said demurrer is in words and figures as follows, to-wit:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 2999.

QUINCY, OMAHA AND KANSAS CITY RAILROAD COMPANY, Complainant,

vs.

JOHN A. KNOTT, JOSEPH P. RICE and FRANK A. WIGHTMAN, Railroad Commissioners of the State of Missouri; Herbert S. Hadley, Attorney General of the State of Missouri; Charles M. Daily, William F. Davis and James F. Robb, Defendants.

The Demurrer of James S. Robb, One of the Above-named Defendants, to the Bill of Complaint of The Quincy, Omaha and Kansas City Railroad Company, the Above-named Complainant.

This defendant, by protestation, not confessing or acknowledging all or any of the matters or things in the said bill of complaint contained, to be true, in such manner and form as the same are therein and thereby set forth and alleged, demurs to the said bill, and for causes of demurrer, shows:

1. That it appears by the complainant's own showing by the said bill, that it is not entitled to the relief prayed by said bill, or any relief whatever, against this defendant.

2. That said bill of complaint of the complainant is wholly without equity.

3. That this defendant is not a proper party defendant to the bill of complaint.

31 Wherefore, and for divers other good causes of demurrer appearing on said bill, this defendant demurs thereto, and he prays the judgment of this honorable Court whether he shall be compelled to make further or any answer to the said bill, and he humbly prays to be hence dismissed with his reasonable costs in his behalf sustained.

HERBERT S. HADLEY,
Attorney General;
JOHN KENNISH,
SANFORD B. LADD,
Solicitors for Defendant.

SANFORD B. LADD,
Of Counsel.

I hereby certify that the foregoing demurrer is, in my opinion well founded in point of law.

SANFORD B. LADD,
Of Counsel for Defendant.

32 Afterwards, to-wit, on the 7th day of August, 1905, the demurrer of W. F. Davis to the Bill of Complaint was filed. Said demurrer is in words and figures as follows, to-wit:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 2999.

QUINCY, OMAHA AND KANSAS CITY RAILROAD COMPANY, Complainant,

vs.

JOHN A. KNOTT, JOSEPH P. RICE and FRANK A. WIGHTMAN, Railroad Commissioners of the State of Missouri; Herbert S. Hadley, Attorney General of the State of Missouri; Charles M. Daily, William F. Davis and James F. Robb, Defendants.

The Demurrer of W. F. Davis, One of the Above-named Defendants, to the Bill of Complaint of The Quincy, Omaha and Kansas City Railroad Company, the Above-named Complainant.

This defendant, by protestation, not confessing or acknowledging all or any of the matters or things in the said bill of complaint contained, to be true, in such manner and form as the same are therein and thereby set forth and alleged, demurs to the said bill, and for causes of demurrer, shows:

1. That it appears by the complainant's own showing by the said bill, that it is not entitled to the relief prayed by said bill, or any relief whatever, against this defendant.

2. That said bill of complaint of the complainant is wholly without equity.

3. That this defendant is not a proper party defendant to the bill of complaint.

33 Wherefore, and for divers other good causes of demurrer appearing on said bill, this defendant demurs thereto, and he prays the judgment of this honorable Court whether he shall be compelled to make further or any answer to the said bill, and he humbly prays to be hence dismissed with his reasonable costs in his behalf sustained.

HERBERT S. HADLEY,
Attorney General;
JOHN KENNISH,
SANFORD B. LADD,
Solicitors for Defendant.

SANFORD B. LADD,
Of Counsel.

I hereby certify that the foregoing demurrer is, in my opinion well founded in point of law.

SANFORD B. LADD,
Of Counsel for Defendant.

34 Afterwards, to-wit, on the 7th day of August, A. D. 1905, the demurrer of Charles M. Daily was filed.
Said demurrer is in words & figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 2999.

QUINCY, OMAHA AND KANSAS CITY RAILROAD COMPANY, Complainant,

vs.

JOHN A. KNOTT, JOSEPH P. RICE, and FRANK A. WIGHTMAN, Railroad Commissioners of the State of Missouri; Herbert S. Hadley, Attorney General of the State of Missouri; Charles M. Daily, William F. Davis, and James F. Robb, Defendants.

The Demurrer of Charles M. Daily, One of the Above-named Defendants, to the Bill of Complaint of the Quincy, Omaha and Kansas City Railroad Company, the Above-named Complainant.

This defendant, by protestation, not confessing or acknowledging all or any of the matters or things in the said bill of complaint contained, to be true, in such manner and form as the same are therein and thereby set forth and alleged, demurs to the said bill, and for causes of demurrer, shows:

1. That it appears by the complainant's own showing by the said bill, that it is not entitled to the relief prayed by said bill, or any relief whatever, against this defendant.
2. That said bill of complaint of the complainant is wholly without equity.

35 3. That this defendant is not a proper party defendant to the bill of complaint.

Wherefore, and for divers other good causes of demurrer appearing on said bill, this defendant demurs thereto, and he prays the judgment of this honorable Court whether he shall be compelled to make further or any answer to the said bill; and he humbly prays to be hence dismissed with his reasonable costs in his behalf sustained.

HERBERT S. HADLEY,
Attorney General;
JOHN KENNISH,
SANFORD B. LADD,
Solicitors for Defendant.

SANFORD B. LADD,
Of Counsel.

I hereby certify that the foregoing demurrer is, in my opinion, well founded in point of law.

SANFORD B. LADD,
Of Counsel for Defendant.

36 Afterwards, to-wit, on the 14th day of October, 1905, a waiver of affidavits to demurrers was filed. Said waiver of affidavits is in words and figures as follows, to-wit:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. —.

—— ——, Complainant,
vs.
JOHN A. KNOTT et al., Defendants.

The affidavits of the defendants to the several demurrers this day filed herein to the Bill of Complaint, are hereby waived.

FRANK HAGERMAN,
Solicitors for Complainant.

Kansas City, Mo., August 7, 1905.

37 Afterwards, to-wit, on the 14th day of October, 1905, the following order was filed and entered of record:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 2999.

QUINCY, OMAHA AND KANSAS CITY RAILROAD CO., Complainant,
vs.
JOHN A. KNOTT et al., Defendants.

Order.

This cause coming on for hearing this October 14, 1905, upon each and all of the demurrers heretofore filed by defendants herein, the complainant appeared by Frank Hagerman, its solicitor, and said demurring defendants by Sanford B. Ladd, their solicitor, and the court being fully advised in the premises overrules each and all of the said demurrers, and at the request of the said solicitors of said defendants they are given until the November, 1905, Rules in which to file answers.

(Signed) SMITH McPHERSON, *Judge.*

38 Afterwards, to-wit, on the 28th day of November, A. D. 1905, the joint and several answer of John A. Knott et al. was filed.

Said answer is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

QUINCY, OMAHA AND KANSAS CITY RAILROAD COMPANY, Complainant,

vs.

JOHN A. KNOTT, JOSEPH P. RICE, and FRANK A. WIGHTMAN, Railroad Commissioners of the State of Missouri; Herbert S. Hadley, Attorney General of the State of Missouri; Charles M. Daily, William F. Davis, and James S. Robb, Defendants.

The Joint and Several Answer of John A. Knott, Joseph P. Rice, and Frank A. Wightman, Three of the Defendants, to the Bill of Complaint of the Quincy, Omaha & Kansas City Railroad Company, Complainant.

These defendants respectively now and at all times hereafter saving to themselves all and all manner of benefit of exception or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in the said bill contained, for answer thereto, or to so much thereof as these defendants are advised it is material or necessary for them to make answer to, answering, say:

I.

They admit the averments of paragraph numbered I of complainant's bill of complaint, except in the following particulars. They say that they have no knowledge, information or belief as to whether the lines owned and operated by the complainant are of the length, respectively, stated, as therein stated.

39

II.

These defendants admit that this cause arises under the Constitution and Laws of the United States; but they deny that said Act of 1905 is unconstitutional or violative of the provisions of the Constitution of the United States or of the Fourteenth amendment thereto, or contrary to the laws of the United States. They admit that the matter and amount in dispute exceeds, exclusive of interest and costs, the sum or value of Two Thousand Dollars ($2,000).

III.

They admit that they constitute the Board of Railroad Commissioners of the State of Missouri, and that the defendant, Herbert S. Hadley, is the Attorney General of the State of Missouri, but they deny that either they or the said defendant, Hadley, are required by law to do or perform the special duties mentioned in said bill of complaint, except as in this answer hereinafter admitted.

IV.

They admit that the other defendants are citizens and residents respectively of the State of Missouri, and of the counties of said State mentioned in paragraph IV of said bill of complaint; but whether each or any of them are engaged in shipping over the complainant's road or other roads in the State of Missouri, any of the commodities mentioned in the Act of 1905, or whether they represent any class of shippers, these defendants have no knowledge, information or belief.

V.

They admit that paragraph V of the complainant's bill of
40 complaint, correctly sets out Sections 1191, 1192 and 1193 of the Revised Statutes of Missouri of 1899, and that Section 1194 of said Revised Statutes fixed the maximum rates for the classes of freight designated in said Section 1193, as Classes D, E, F, G, H, I and J, respectively. They admit that the statutes of the state provide for the election and qualification of Railroad Commissioners, and prescribe their special duties, and as to the allegations in paragraph V of said bill of complaint, regarding the special duties imposed upon them, and upon prosecuting attorneys and the Attorney General, by the statutes of the State, they aver that Articles II and IV of Chapter 12 of the Revised Statutes of Missouri of 1899, and an Act of the General Assembly of the State of Missouri, entitled, "An Act to amend Chapter 12 of the Revised Statutes of the State of Missouri of 1899, entitled 'Corporations, private,' by adding two new sections after Section 1194, to be known as Sections 1194*a* and 1194*b*, providing that the board of railroad and warehouse commissioners shall fix, maintain, establish, reduce and modify freight rates upon all railroads in this State, and providing for the manner of so doing and enforcing the same," approved April 6, 1903, published in the "Laws of Missouri, passed at the Session of the Forty-second General Assembly," at page 132, of which said Statutes and Act, this Court will take judicial notice, prescribe particularly all the duties imposed by law upon these defendants, constituting the Board of Railroad Commissioners, and upon prosecuting attorneys and the attorney general, respecting freight rates and the enforcement of any laws of this State governing or affecting the same; and they pray leave to refer to said statutes and said Act, and that the same may be considered in connection with this answer,
41 with like effect as if they had been fully set out herein.

VI.

These defendants admit the passage by the legislature of the State of Missouri, of the Act approved April 6, 1903, and that said Act is correctly set out in paragraph VI of said bill of complaint.

VII.

These defendants admit the passage by the legislature of the State of Missouri, of the Act approved April 18, 1905, and that said Act

is correctly set out in paragraph VII of said bill of complaint. They admit that said last named Act took effect on the 16th day of June, 1905; that the rates at the time of the filing of said bill of complaint being charged by the complainant for the transportation of freight of the character mentioned in said last named Act, were shown in schedules on file with the Railroad Commissioners; but these defendants deny that said rates so charged by complainant were, as respects all the freight of the character mentioned in said Act, in excess of the maximum rates fixed by said Act of 1905. They admit that as to some of the commodities mentioned in said Act, the same would require some reduction in the rates charged by the complainant for the transportation thereof at the time of the filing of said bill of complaint, and that such reduction would make necessary a change in the schedules so filed by the complainant with the Railroad Commissioners; but these defendants deny that such change could not and cannot be made by the complainant without jeopardizing its property interest. These defendants deny that they had, at or before the filing of said bill of complaint, threatened to enforce

42 the provisions of the Act of 1905, by entering upon investigations, either upon the instigation of the Board of Railroad Commissioners or on the complaint of shippers, or by determining or adjudging the complainant's then existing schedule of rates to be unreasonable, unjust or extortionate, or by requiring the complainant, under pain of any penalties, to file or publish a new schedule fixing rates not in excess of those mentioned in said Act of 1905; and they deny that they proposed to do any of said things. They deny that they propsed to file, post or publish as the complainant's schedule, the maximum rates fixed in said Act of 1905, if the complainant should refuse to do so, or to direct any prosecuting attorney to prosecute or recover of complainant any penalties, or to direct the Attorney General to assist in any such prosecution, or to direct the Attorney General to prosecute the complainant, or recover any penalties for the complainant's failure to comply with the orders which they proposed from time to time to make in investigations instituted for the enforcement of said Act of 1905. They deny that at that time they proposed to make any such investigations. On the contrary, these defendants aver that when this suit was begun the time had not arrived at which these defendants could take any action whatever under or in pursuance of said Act of 1905, and that they were not at that time proposing, because the time had not then arrived, when they, as such Board of Railroad Commissioners, could properly or lawfully propose any action in the premises. They had not, as a Board, determined or considered the course proper to be pursued by them in respect of the matter when said Act of 1905 should have taken effect. They deny that any prosecuting attorney or the Attorney General would have conducted such prosecution, or sought to recover any such penalties.

43 As to whether shippers along the line of complainant's railroad were then and are now numerous, or engaged daily, or at all, in making or receiving shipments to or from points in the state of Missouri of any freight of the special classes designated in

said Act of 1905, these defendants have no knowledge, information or belief. They deny that by any such shippers or shipper there would have been, or will be, instituted suits to recover of the complainant any damages or attorney's fees.

Whether any other shippers in the counties in the State where the complainant's line of road extends are interested with those named as defendants herein, these defendants have no knowledge, information or belief; but they deny that any shipper or other person not named as a defendant in this action can or will be bound by any decree which may be entered herein.

VIII.

These defendants deny that said Act of 1905 is invalid, is unconstitutional, or inoperative or of no force or effect for any of the reasons mentioned in paragraph VIII of the complainant's said bill of complaint.

They deny that said Act fixes rates unreasonable in amount, or that it will, if enforced confiscate the property of the complainant or require it to carry any of the commodities specified therein, or to conduct its freight or other local traffic in the state of Missouri, without profit or reward, or for a sum which will not pay the actual operating expenses necessarily incurred in performing said services

They deny that any part of said Act is contrary to, or violative of any of the provisions of the Constitution of the United States,
44 or to the fourteenth amendment thereto. They deny that said Act is discriminatory, or thereby violative of said fourteenth amendment.

They deny that the provision of said Act that in computing the rate of freight, the distance shall be computed from the point where it is received to the point of destination in the state, notwithstanding it may pass from one road to another, impairs the complainant's freedom of a contract, or fixes a rate for it based upon carriage over the line of another road, or that thereby any provision of the Federal Constitution, or of any amendment thereto, is violated, or that the freedom of contract, guaranteed by section 4, article 2, of the state constitution, is denied.

They deny that said law as it now stands is uncertain, as averred in subdivision (*d*) of paragraph VIII of the complainant's bill of complaint, for the reason stated therein, or for any other reason; or that said Act of 1905 is invalid because of any reason stated in said subdivision (*d*). They deny that said section 1194*a* is a discrimination between individuals and corporations, or denies to the complainant the equal protection of the law guaranteed it by the fourteenth amendment to the Constitution of the United States. These defendants further aver that even if said section 1194*a* did operate to discriminate against the complainant, it might be stricken out and Section 1194 would remain a valid enactment capable of enforcement. They aver that the effect of said Section 1194 is not to discriminate against said defendant, and that at the time of the taking effect of said Act of 1905, there was not, and is not now,

any railroad or part of railroad in the state of Missouri which is not owned and operated by a railroad company.

45 IX.

These defendants have no knowledge, information or belief as to the number of miles of railroad which the complainant has in its entire system, or whether the whole of it, or that portion of it in Missouri was constructed and fairly acquired at a fair and reasonable cost, or whether it was judiciously located, or whether it has at all times or ever been properly or economically operated, or whether its capitalization in bonds and stocks for its entire system, is the amount stated in the bill of complaint, or whether much capitalization is fair or reasonable or less than the amount for which said road could be reproduced.

Whether the complainant's lines in Missouri secure and receive a due, fair and reasonable proportionate benefit of the entire system, or the value of the property in Missouri, or its capacity for serving the public, is proportionately increased or augmented thereby, or whether the cost of constructing or replacing its railroad in Missouri, and providing and furnishing its equipment and terminals, or of constructing and replacing its entire system to-day would exceed its original cost, these defendants have no knowledge, information or belief.

These defendants deny that upon the value of the property of the complainant, it has only been able in the past to have any kind of return, because it was operated as a part of a whole system; they deny that the rates fixed in the Act of 1905, or any of them, are unjust, unfair or unreasonable; they have no knowledge, information or belief as to whether the charges now made by complainant for transfer of passengers and freight in the other states through which its lines extend, or upon its interstate traffic, are just or reasonable, and they deny that if a corresponding reduction
46 should be made in the rates upon its interstate traffic, its earnings would be reduced below a sum sufficient to pay its operating expenses and taxes, and to maintain its lines of railroad, or that no regard or profit would be left to complainant as compensation for its services as a common carrier upon its railroad.

X.

These defendants admit that the rates at the time of the filing of the said bill of complaint, and now charged by the complainant for state shipments on some of the classes of freight mentioned in said Act of 1905, were and are in some cases, in excess of the maximums therein fixed, but they are informed and believe, that, as to some of the commodities mentioned in said Act, the rates charged by the complainant were and are less than the maximum rates fixed by said Act. They deny that if the charges for the classes of freight mentioned in said Act of 1905 should be made by the complainant at the maximum rates fixed in said Act, the complainant would fail to derive any profit therefrom or would be compelled to do such

business at any loss. They deny that the rates fixed in said Act are unjust or unreasonably low or confiscatory in their nature, whether considered separately or as a whole, or that they will not make a return upon the investment in the property of complainant in this state, or that the gross receipts of all the state business which the complainant does, can or will do in Missouri, when charging the maximum rates fixed by the Act of 1905, for the classes of freight therein mentioned, will not be sufficient to pay the operating expenses and the cost of doing such business in the state, or that there will not be left any sum as profit or return upon the
47 value of the property of the complainant devoted to the use of such business in this state.

These defendants have no knowledge, information or belief as to whether the present schedule or rates published, charged or maintained by the complainant for the transportation of property between points on its line in the state of Missouri is lawful, just or reasonable to the public. They deny that said schedule as respects many of the rates, has been in effect under the sanction of, or as prescribed by these defendants, or that it has been adjusted with reference to the business or commercial necessities of the people of Missouri, or that the freight of different kinds has been classified as reasonably required by the difference in the cost of transportation, size, value and other circumstances bearing thereon.

As to whether said adjustment was made so that commodities shall, and whether they do move freely over the lines of the complainant, these defendants have no knowledge, information or belief. These defendants, however, aver, that so far from any schedule of rates adjusted by the complainant having received the sanction of these defendants, many of the rates in said schedule have been fixed arbitrarily by the complainant and are very much lower than those which they have been authorized to charge by these defendants.

These defendants deny that the present rates of the complainant on commodities locally transported between points in this state are not now, or that they have not at all times been, remunerative to or afford the complainant a fair and reasonable return for its services in that behalf and upon the value of its property employed
48 therein. They deny that the cost of doing the business locally in the state of Missouri is three times the average cost and expense of transporting its entire traffic within the state.

While it may be true, as averred in paragraph IX of complainant's bill of complaint, that local traffic is largely handled upon local trains, these defendants have no knowledge, information or belief whether such trains receive or deliver freight at each station, and they deny that such trains do not have a full train load for any part of the journey; on the contrary they aver that often through trains are transported by the complainant for the whole, or a large part of the journey within the limits of this state. They deny that, for any reason stated in said paragraph X of the bill of complaint, the cost of handling local traffic is much greater than for through business, or that such business is done with greater economy in any other respect. They deny that the receipts from local business are little in excess

of the average receipts for the transportation of all its traffic, or that such local business is now performed at any loss, or that the complainant will be compelled to so reduce its rates upon the articles and commodities embraced in said Act, or that any such reduction will result in its loss of $18,022.89, or any sum whatever, of 34 per cent or any other per cent upon the receipts of the complainant for the transportation of the commodities covered by said Act for the year 1904, had said Act been in effect during said year.

These defendants have no knowledge, information or belief as to whether the complainant's railroads have been economically constructed, maintained or operated; they deny that the receipts
49 from its entire local business, if said Act should be enforced, will be so reduced that the complainant will be unable to save a fair return upon the value of its property, or that it cannot pay, under said rates, the cost and expense of maintaining and keeping in proper repair and condition its railroads and equipments in the state, or properly perform its duties to the public in the handling and transporting of its traffic local to the state.

These defendants have no knowledge, information or belief as to the amount of the complainant's gross earnings for the year ending June 30, 1904, or whether they were the amount stated in *in* paragraph 10 of said bill of complaint, or whether its operating expenses and taxes were the amount stated in said paragraph. They deny that there was any deficit of $7,672.30, or any other sum, or that for any period the complainant's road has not earned enough to pay the dividends to its stockholders. They have no knowledge, information or belief as to whether the year 1904 was one of large volume of traffic upon the complainant's roads in comparison with preceding years, or whether it was greater than is reasonable to anticipate in the future. They deny that any reduction in the rates provided by the Act of 1905 will not increase the volume of traffic nor the earnings therefrom, or that it will diminish the earnings for the future to any extent stated whatever.

They deny that under the law the reasonableness of the rates prescribed by the state for the transportation of property between points within its territory cannot be determined without reference to its interstate business or to the profit derived therefrom; and they deny that the complainant will be unable to make up any loss of revenue which it erred in the bill of complaint will be caused by
50 said Act by increasing its rates on interstate traffic, or on the other articles of local traffic other than those mentioned in the Act, or that any loss of revenue will be caused by said Act.

They deny that the Legislature cannot compel the complainant to carry any given commodity for less than the cost and fair profit, or that such will be the effect of the Act in question.

They deny that the provisions of said Act of 1905, that in computing the distance upon which said maximum rates shall be based, the whole distance over which the shipment is transported in the state shall be considered, notwithstanding it may be over the roads of several companies, is invalid for the reason stated in said paragraph IX of said bill of complaint, or for any reason whatever; they deny that

said provision will operate to reduce rates upon through shipments so as to cause them to be unreasonable, confiscatory or unjust in any degree whatever. They deny that said provision makes any reduction that is arbitrary, discriminatory or not based upon the just difference in the cost to the carriers or other circumstances, or that it requires the carriers concerned in a through shipment to enter into involuntary contractual relations in respect to such shipment, or the division of the through rate; and they deny that the whole, or any part, of said Act of 1905 is in conflict with the constitutional provisions mentioned in the bill of complaint for any reason stated in said paragraph IX of the bill of complaint, or for any reason whatever.

XI.

These defendants admit that the companies mentioned in
51 paragraph XII of the complainant's bill of complaint carry the classes of freight mentioned in said Act, and that they claim that the maximum rates thereby fixed are confiscatory in their nature, and if charged would result in their doing their state business without any profit. But these defendants deny that such claim is in point of fact true.

These defendants deny that the maximum rates fixed by said Act of 1905 are unreasonably low as against any of said companies or that they will not permit any of them to make a profit upon their state business, or that for that reason said Act is invalid as against said companies.

They deny that said Act, if held valid as to complainant, is unconstitutional because of any alleged discrimination between the complainant and any other persons or corporations operating railroads in this state. They aver that the only discrimination of which the complainant will be allowed to complain is a discrimination against itself in favor of some other person or corporation; and they deny that any of the provisions of the Constitution of the United States, or of any of the amendments thereto, are in any respect violated by said Act.

XII.

Further answering, and with special reference to the averments of paragraph XII of the complainant's bill of complaint, these defendants deny that said Act of 1905 fixes and establishes maximum rates which are unjust, unreasonable or unconstitutional for any reason.

These defendants have no knowledge, information or belief as to whether the cost of transporting live stock is greater than that of any other commodities mentioned in said Act, or whether the same re-
duces the rate thereon less than on salt, cement, lumber, lath
52 or shingles. They have no knowledge, information or belief as to whether the different articles transported on complainant's railway have been arranged in classes according to cost of carriage, price, risk of injury, bulk, volume of traffic, or any other circumstances, or have remained in substantially the same classes for any period of time, or whether the same has been recognized, ap-

proved or enacted into law by any statutory classification in effect in Missouri.

They deny that any reduction in rates upon articles affected by the said Act of 1905 is unequal or partial or arbitrary as compared with any other commodities, or as between the commodities included in said Act. Or that the same works any injustice between shippers, purchasers or manufacturers of the state of Missouri, or deprives them of their property without due process of law, or deprives them of the equal protection of the laws, or operates to deprive the complainant of its property without due process of law, or deprives the complainant of the equal protection of the laws by any of the methods or for any of the reasons mentioned in said paragraph XIII of the bill of complaint. They deny that the legislature had, or has, established maximum rates or charges for the transportation of all kinds of property, or that even if the legislature had done so, any change effected in such rates by said Act of 1905, is presumably unfair or unreasonable in any respect. They deny that the legislature requires the complainant to discriminate in favor of any persons or shippers, or to give them a right of transportation for a less rate than the general rate heretofore fixed by any law; or that such rate is less than is just and reasonable in view of the cost to the carrier and the value of the service rendered to the shipper.

53 XIII.

These defendants further answering say, that they are informed and believe that this complainant and seventeen other railroad companies or corporations, owning and operating lines of railroad in the State of Missouri immediately after the approval of said Act of 1905, agreed and came to an understanding with each other, that none of them would comply with the provisions thereof, or transport the commodities named in said Act at the rates mentioned therein, or make any effort to revise their schedule of rates for transporting the commodities mentioned in said Act and other commodities transported by them, in such a manner as to yield obedience to said Act, and at the same time derive a reasonable profit upon the fair valuation of their property necessary to carry on their interstate business, but determined, on concerted action among themselves, to disobey said Act, and to deny its validity and any obligation on their part to comply with it, and to bring suits, each of them for itself, on the day said Act should take effect, to enjoin the officers of the State from taking any action or discharging any duties which might be imposed upon them by law in respect of said Act, and for the further purpose of obtaining a decree of this court adjudging said Act to be null and void upon the grounds stated in this complainant's bill of complaint.

These defendants further aver that in pursuance of said agreement and understanding, this complainant and the said seventeen other companies or corporations did, on the 16th day of June, 1905, each for itself, file in said court its bill of complaint, all of them being upon substantially the same grounds as those stated in this

complainant's bill of complaint, and praying for substantially
54 the same relief; and did on the same day, in each of said suits, obtain from this court a restraining order, directed to, and which was served upon, these defendants and the Attorney General of the state of Missouri, and certain persons designated in said bills of complaint as shippers, enjoining these defendants and the Attorney General from performing any of the duties imposed upon them as State officials, by law, looking to the enforcement of the provisions of said Act, (for the express terms of which said order these defendants pray leave to refer to the same as it appears in the record of this cause) and afterwards, while said restraining order was in force, did obtain from this court a preliminary injunction in the terms of said order, which said preliminary injunction is still operative.

These defendants say that they are informed and believe that the rates fixed by said Act of 1905, do not affect all the articles of freight transported by the complainant in its interstate traffic, but that a very large number of articles, and a very large part of its interstate traffic, remain wholly unaffected and unregulated as to rates, by said Act or by any other existing statute. And these defendants say that the question of whether rates are compensatory or otherwise, can only be determined upon a consideration of a schedule of rates which shall embrace every article and all the freight transported by the complainant in carrying on its interstate business.

The defendants are informed and believe that the complainant, if it had chosen to do so, instead of attacking the reasonableness or fairness of the rates upon the few articles mentioned in the Act of 1905, might have revised its schedule or tariff of rates upon all the articles of freight transported by it in carrying on its interstate traffic, including those mentioned in said Act of
55 1905, in such a manner that the rates for carrying the articles not mentioned in said Act, would have been not unreasonable or unjust, either of itself or to the public, and that the income derived by the complainant for performing the service of transporting freight at the rates and charges fixed in such a schedule, would have been sufficient to assure to the complainant a fair and reasonable return upon the fair value of its property necessarily employed in the carrying on of such interstate business.

These defendants further aver that the complainant afforded to these defendants, as a Board of Railroad Commissioners, no opportunity, after said Act of 1905 took effect, to revise, adjust and fix a schedule of rates upon all the articles of freight transported by the complainant in its intra-state traffic, including those mentioned in said Act of 1905, in such a manner that the provisions of said Act of 1905 would be observed, and at the same time the rates upon all other articles not mentioned in this Act, should be not unreasonable or unjust, either to the complainant or to the public.

These defendants further say that if the complainant had failed to so revise or to attempt to so revise its schedules, these defendants, as such Board, would, if they had been given the opportunity, which was denied to them by the injunction in this cause, in the discharge of the duties imposed on them by law, have attempted to fix and

establish such a schedule of rates upon all the articles of freight transported by the complainant in its intra-state traffic, as would have observed or complied with the provisions of said Act of 1905, and in other respects have been not unjust or unfair either to the complainant or to the public, and they believe that they could have done so.

56 These defendants further say that by the issue of the restraining order, and the preliminary injunction in this cause, they have been prevented from fixing any such schedule or attempting to fix a schedule of rates which should be just to the complainant and to shippers; that the complainant, by the filing of its bill before these defendants, as such Board, could lawfully act in the premises, has unwarrantably assumed that these defendants, as such Board, would fix and establish a schedule of rates which would be unjust to the complainant.

These defendants say that in view of the statutes of this State, which define the duties to be discharged by them, as such Board, this action ought not to be maintained, because it was brought before these defendants had any opportunity to discharge any of such duties or act in the matter of a general revision of the schedule of rates, made necessary by said Act of 1905.

These defendants deny that the complainant is entitled to any relief whatever against these defendants, without this, that any other matter, cause or thing in the complainant's said bill of complaint, or amendments thereto, contained, material or necessary for these defendants to make answer unto, and not herein or hereby well and sufficiently answered, confessed, traversed and avoided or denied, is true to the knowledge or belief of these defendants; all which matters and things these defendants are ready and willing to aver, maintain and prove, as this honorable court shall direct, and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

HERBERT S. HADLEY,
Attorney General;
JOHN KENNISH,
Assistant Attorney General,
Solicitors for Defendants.

SANFORD B. LADD,
Of Counsel.

57 Afterwards, on the 1st day of December, A. D. 1905, the answer of Herbert S. Hadley, Attorney General, was filed. Said answer is in words and figures as follows:—

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

QUINCY, OMAHA AND KANSAS CITY RAILROAD COMPANY, Complainant,

v.

JOHN A. KNOTT, JOSEPH P. RICE, and FRANK A. WIGHTMAN, Railroad Commissioners of the State of Missouri; Herbert S. Hadley, Attorney General of the State of Missouri; Charles M. Daily, William F. Davis, and James S. Robb, Defendants.

The Answer of Herbert S. Hadley, Attorney General of the State of Missouri, One of the Defendants, to the Bill of Complaint of the Quincy, Omaha & Kansas City Railroad Company, Complainant.

This defendant now and at all times hereafter saving to himself all and all manner of benefit of exception or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in the said bill contained, for answer thereto, or to so much thereof as this defendant is advised it is material or necessary for him to make answer to, answering, says:

I.

He admits the averments of paragraph numbered I of complainant's bill of complaint, except in the following particular: He says that he has no knowledge, information or belief as to whether the lines owned and operated by the complainant are of the length, respectively, stated, as therein stated.

58

II.

This defendant admits that this cause arises under the Constitution and laws of the United States; but he denies that said Act of 1905 is unconstitutional or violative of the provisions of the Constitution of the United States or of the Fourteenth Amendment thereto, or contrary to the laws of the United States. He admits that the matter and amount in dispute exceeds, exclusive of interest and costs, the sum or value of Two Thousand Dollars ($2,000).

III.

He admits that the defendants, John A. Knott, Joseph P. Rice and Frank A. Wightman, constitute the Board of Railroad Commissioners of the State of Missouri, and that this defendant is the Attorney General of the State of Missouri, but he denies that either they or this defendant, are required by law to do or perform the special duties mentioned in said bill of complaint, except as in this answer hereinafter admitted.

IV.

He admits that the other defendants are citizens and residents respectively, of the State of Missouri, and of the counties of said State mentioned in paragraph IV of said bill of complaint; but whether each or any of them are engaged in shipping over the complainant's road or other roads in the State of Missouri any of the commodities mentioned in the Act of 1905, or whether they represent any class of shippers, this defendant has no knowledge, information or belief.

59

V.

He admits that paragraph V of the complainant's bill of complaint, correctly sets out Sections 1191, 1192 and 1193 of the Revised Statutes of Missouri of 1899, and that Section 1194 of said Revised Statutes fixed the maximum rates for the classes of freight designated in said Section 1193 as Classes D, E, F, G, H, I, and J, respectively. He admits that the statutes of the State provide for the election and qualification of Railroad Commissioners, and prescribe their special duties, and as to the allegations in paragraph V of said bill of complaint, regarding the special duties imposed upon them and upon the prosecuting attorneys and the Attorney General by the statutes of the State, he avers that Articles II and IV of Chapter 12 of the Revised Statutes of Missouri of 1899, and an act of the General Assembly of the State of Missouri, entitled "An act to amend Chapter 12 of the Revised Statutes of the State of Missouri, of 1899, entitled 'Corporations, private,' by adding two new sections after Section 1194, to be known as Sections 1194*a* and 1194*b*, providing that the board of railroad and warehouse commissioners shall fix, maintain, establish, reduce and modify freight rates upon all railroads in this State, and providing for the manner of so doing and enforcing the same," approved April 6, 1903, published in the "Laws of Missouri, passed at the Session of the Forty-second General Assembly" at page 132, of which said statutes and Act, this Court will take judicial notice, prescribe particularly all the duties imposed by law upon those defendants, constituting the board of Railroad Commissioners, and upon prosecuting attorneys and the Attorney General, respecting freight rates and the enforcement of any laws of this state governing or affecting the same; and he prays leave to refer to said statutes and said Act, and that the same may be considered in connection
60 with this answer, with like effect as if they had been fully set out herein.

VI.

This defendant admits the passage by the Legislature of the State of Missouri, of the Act approved April 6, 1903, and that said Act is correctly set out in paragraph VI of said bill of complaint.

VII.

This defendant admits the passage by the Legislature of the State of Missouri, of the Act approved April 15, 1905, and that said Act is correctly set out in paragraph VII of said bill of complaint. He admits that said last named Act took effect on the 16th day of June, 1905; that the rates at the time of the filing of said bill of complaint being charged by the complainant for the transportation of freight of the character mentioned in said last named Act, were shown in the schedules on file with the Railroad Commissioners; but this defendant denies that said rates so charged by complainant were, as respects all the freight of the character mentioned in said Act, in excess of the maximum rates fixed by said Act of 1905. He admits that as to some of the commodities mentioned in said Act, the same would require some reduction in the rates charged by the complainant for the transportation thereof at the time of the filing of said bill of complaint, and that such reduction would make necessary a change in the schedules so filed by hte complainant with the Railroad Commissioners; but this defendant denies that such change could not and cannot be made by the complainant without jeopardizing its property in-
61 terests. This defendant denies that the Railroad Commissioners had, at or before the filing of said bill of complaint, threatened to enforce the provisions of the Act of 1905, by entering upon investigations, either upon the instigation of the Board of Railroad Commissioners or on the complaint of shippers or by determining or adjudging the complainant's then existing schedule of rates to be unreasonable, unjust or extortionate, or by requiring the complainant, under pain of any penalties, to file or publish a new schedule fixing rates not in excess of those mentioned in said Act of 1905; and he denies that they proposed to do any of said things. He denies that they proposed to file, post or publish as the complainant's schedule, the maximum rates fixed in said Act of 1905, if the complainant should refuse to do so, or to direct any prosecuting attorney to prosecute or recover of complainant any penalties, or to direct the Attorney General to assist in any such prosecution, or to direct the Attorney General to prosecute the complainant, or recover any penalties for the complainant's failure to comply with the orders which they proposed from time to time to make in investigations instituted for the enforcement of said Act of 1905. He denies that at that time they proposed to make any such investigations. On the contrary, this defendant avers that when this suit was begun the time had not arrived at which said Railroad Commissioners could take any action whatever under or in pursuance of said Act of 1905, and that they were not at that time proposing, because the time had not then arrived when they, as such Board of Railroad Commissioners, could properly or lawfully propose any action in the premises. They had not, as a Board, determined or considered the course proper to be pursued by them in respect of the matter when said Act of 1905 should have taken effect. He denies that any prosecuting at-
62 torney or the Attorney General would have conducted such prosectuions, or sought to recover any such penalties.

As to whether shippers along the line of complainant's railroad were then and are now numerous, or engaged daily, or at all, in making or receiving shipments to or from points in the State of Missouri of any freight of the special classes designated in said Act of 1905, this defendant has no knowledge, information or belief. He denies that by any such shippers or shipper there would have been, or will be, instituted suits to recover of the complainant any damages or attorney's fees.

Whether any other shippers in the counties in the state where the complainant's line of road extends, are interested with those named as defendants herein, this defendant has no knowledge, information or belief; but he denies that any shipper or other person not named as a defendant in this action can or will be bound by any decree which may be entered herein.

VIII.

This defendant denies that said Act of 1905 is invalid, is unconstitutional, or inoperative or of no force or effect for any of the reasons mentioned in paragraph VIII of the complainant's said bill of complaint.

He denies that said Act fixes rates unreasonable in amount, or that will, if enforced, confiscate the property of the complainant or require it to carry any of the commodities specified therein, or to conduct its freight or other local traffic in the State of Missouri, without profit or reward, or for a sum which will not pay the actual operating expenses necessarily incurred in performing said services.

He denies that any part of said Act is contrary to, or violative of any of the provisions of the Constitution of the United
63 States, or to the Fourteenth Amendment thereto. He denies that said Act is discriminatory, or thereby violative of said Fourteenth Amendment.

He denies that the provision of said Act that in computing the rate of freight the distance shall be computed from the point where it is received to the point of destination in the state, notwithstanding it may pass from one road to another, impairs the complainant's freedom of a contract, or fixes a rate for it based upon carriage over the line of another road, or that thereby any provision of the Federal Constitution, or of any amendment thereto, is violated, or that the freedom of contract, guaranteed by Section 4, Article 2, of the State Constitution, is denied.

He denies that said law as it now stands is uncertain, as averred in subdivision (*d*) of paragraph VIII of the complainant's bill of complaint, for the reason stated therein, or for any other reason; or that said Act of 1905 is invalid because of any reason stated in said subdivision (*d*). He denies that said Section 1194*a* is a discrimination between individuals and corporations, or denies to the complainant the equal protection of the law guaranteed it by the Fourteenth Amendment to the Constitution of the United States. This defendant further avers that even if said Section 1194*a* did operate to discriminate against the complainant, it might be stricken out and Sec-

tion 1194 would remain a valid enactment capable of enforcement. He avers that the effect of said Section 1194 is not to discriminate against said complainant, and that at the time of the taking effect of said Act of 1905 there was not, and is not now, any railroad or part of railroad in the State of Missouri which is not owned and operated by a railroad company.

64 IX.

This defendant has no knowledge, information or belief as to the number of miles of railroad which the complainant has in its entire system, or whether the whole of it, or that portion of it in Missouri was constructed and fairly acquired at a fair and reasonable cost, or whether it was judiciously located, or whether it has at all times or ever been properly or economically operated, or whether its capitalization in bonds and stocks for its entire system is the amount stated in the bill of complaint, or whether such capitalization is fair or reasonable or less than the amount for which said road could be reproduced.

Whether the complainant's lines in Missouri secure and receive a due, fair and reasonable proportionate benefit of the entire system, or the value of the property in Missouri, or its capacity for serving the public, is proportionately increased or augmented thereby, or whether the cost of constructing or replacing its railroad in Missouri, and providing and furnishing its equipment and terminals, or of constructing and replacing its entire system to-day would exceed its original cost, this defendant has no knowledge, information or belief.

This defendant denies that upon the value of the property of the complainant it has only been able in the past to have any kind of return, because it was operated as a part of a whole system; he denies that the rates fixed in the Act of 1905, or any of them, are unjust, unfair or unreasonable; he has no knowledge, information or belief as to whether the charges now made by complainant for transfer of passengers and freight in the other states through which its lines extend, or upon its interstate traffic, are just or reasonable,
65 and he denies that if a corresponding reduction should be made in the rates upon its interstate traffic its earnings would be reduced below a sum sufficient to pay its operating expenses and taxes, and to maintain its lines of railroad, or that no reward or profit would be left to complainant as compensation for its services as a common carrier upon its railroad.

X.

This defendant admits that the rates, at the time of the filing of said bill of complaint and now, charged by the complainant for State shipments on some of the classes of freight mentioned in said Act of 1905, were and are, in some cases, in excess of the maximum therein fixed, but he is informed and believes, that as to some of the commodities mentioned in said Act, the rates charged by the complainant were and are less than the maximum rates fixed by said Act. He denies that if the charges for the classes of freight men-

tioned in said Act of 1905 should be made by the complainant at the maximum rates fixed in said Act the complainant would fail to derive any profit therefrom or would be compelled to do such business at any loss. He denies that the rates fixed in said Act are unjust or unreasonably low or confiscatory in their nature whether consigned separately or as a whole, or that they will not make a return upon the investment in the property of complainant in this State, or that the gross receipts of all of the State business which the complainant does, can or will do in Missouri, when charging the maximum rates fixed by the Act of 1905, for the classes of freight therein mentioned, will not be sufficient to pay the operating expenses and the cost of doing such business in the state, or that there will not be left any sum as profit or return upon the value of the property of the complainant devoted to the use of such busi-
66 ness in this state.

This defendant has no knowledge, information or belief as to whether the present schedule or rates published, charged or maintained by the complainant for the transportation of property between points on its line in the State of Missouri is lawful, just or reasonable to the public. He denies that said schedule as respects many of the rates has been in effect under the sanction of or as prescribed by said Board of Railroad Commissioners, or that it has been adjusted with reference to the business or commercial necessities of the people of Missouri, or that the freight of different kinds has been classified as reasonably required by the difference in the cost of transportation, size, value and other circumstances bearing thereon.

As to whether said adjustment was made so that commodities shall and whether they do move freely over the lines of the complainant, this defendant has no knowledge, information or belief. This defendant, however, avers that so far from any schedule of rates adjusted by the complainant having received the sanction of said Board, many of the rates in said schedule have been fixed arbitrarily by the complainant and are very much lower than those which they have been authorized to charge by said Board.

This defendant denies that the present rates of the complainant on commodities locally transported between points in this state are not now, or that they have not at all times been, remunerative to or afford the complainant a fair and reasonable return for its services in that behalf and upon the value of its property employed therein. He denies that the cost of doing the business locally in the State of Missouri is three times the average cost and expense of transporting its entire traffic with the state.

While it may be true, as averred in paragraph IX of com-
67 plainant's bill of complaint, that local traffic is largely handled upon local trains, this defendant has no knowledge, information or belief whether such trains receive or deliver freight at each station, and he denies that such trains do not have a full train load for any part of the journey; on the contrary, he avers that often through trains are transported by the complainant for the whole, or a large part of the journey within the limits of this state. He denies that, for any reason stated in said paragraph X of the

bill of complaint, the cost of handling local traffic is much greater than for through business, or that such business is done with greater economy in any other respect. He denies that the receipts from local business are little in excess of the average receipts for the transportation of all its traffic, or that such local business is now performed at any loss, or that the complainant will be compelled to so reduce its rates upon the articles and commodities embraced in said Act, or that any such reduction will result in its loss of $18,022.89, or any sum whatever, of 34 per cent or any other per cent upon the receipts of the complainant for the transportation of the commodities covered by said Act for the year 1904, had said Act been in effect during said year.

This defendant has no knowledge, information or belief as to whether the complainant's railroads have been economically constructed, maintained or operated; he denies that the receipts from its entire local business, if said Act should be enforced, will be so reduced that the complainant will be unable to save a fair return upon the value of its property, or that it cannot pay, under said rates, the cost and expense of maintaining and keeping in proper repair and
68 condition its railroads and equipments in the state, or properly perform its duties to the public in the handling and transporting of its traffic local to the state.

This defendant has no knowledge, information or belief as to the amount of the complainant's gross earnings for the year ending June 30, 1904, or whether they were the amount stated in paragraph 10 of said bill of complaint, or whether its operating expenses and taxes were the amount stated in said paragraph. He denies that there was any deficit of $7,672.30, or any other sum, or that for any period the complainant's road has not earned enough to pay the dividends to its stockholders. He has no knowledge, information or belief as to whether the year 1904 was one of large volume of traffic upon the complainant's roads in comparison with preceding years, or whether it was greater than is reasonable to anticipate in the future. He denies that any reduction in the rates provided by the Act of 1905 will not increase the volume of traffic nor the earnings therefrom, or that it will diminish the earnings for the future to any extent stated whatever.

He denies that under the law the reasonableness of the rates prescribed by the state for the transportation of property between points within its territory cannot be determined without reference to its interstate business or to the profit derived therefrom; and he denies that the complainant will be unable to make up any loss of revenue which it is averred in the bill of complaint will be caused by said Act by increasing its rates on interstate traffic, or on the other articles of local traffic other than those mentioned in the Act. or that any loss of revenue will be caused by said Act.

He denies that the Legislature cannot compel the complainant to carry any given commodity for less than the cost
69 and fair profit, or that such will be the effect of the Act in question.

He denies that the provisions of said Act of 1905, that in computing

the distance upon which said maximum rates shall be based, the whole distance over which the shipment is transported in the state shall be considered, notwithstanding it may be over the roads of several companies, is invalid for the reason stated in said paragraph IX of said bill of complaint, or for any reason whatever; he denies that said provision will operate to reduce rates upon through shipments so as to cause them to be unreasonable, confiscatory or unjust in any degree whatever. He denies that said provision makes any reduction that is arbitrary, discriminatory or not based upon the just difference in the cost to the carriers or other circumstances, or that it requires the carriers concerned in a through shipment to enter into involuntary contractual relations in respect to such shipment, or the division of the through rate; and he denies that the whole, or any part, of said Act of 1905 is in conflict with the constitutional provisions mentioned in the bill of complaint for any reason stated in said paragraph IX of the bill of complaint, or for any reason whatever.

XI.

This defendant admits that the companies mentioned in paragraph XII of the complainant's bill of complaint carry the classes of freight mentioned in said Act, and that they claim that the maximum rates thereby fixed are confiscatory in their nature, and if charged would result in their doing their state business without any profit. But this defendant denies that such claim is in point of fact true.

70 This defendant denies that the maximum rates fixed by said Act of 1905 are unreasonably low as against any of said companies or that they will not permit any of them to make a profit upon their state business, or that for that reason said Act is invalid as against said companies.

He denies that said Act, if held valid as to complainant, is unconstitutional because of any alleged discrimination between the complainant and any other persons or corporations operating railroads in this state. He avers that the only discrimination of which the complainant will be allowed to complain is a discrimination against itself in favor of some other person or corporation; and he denies that any of the provisions of the Constitution of the United States, or of any of the amendments thereto are in any respect violated by said Act.

XII.

Further answering, and with special reference to the averments of paragraph XII of the complainant's bill of complaint, this defendant denies that said Act of 1905 fixes and establishes maximum rates which are unjust, unreasonable or unconstitutional for any reason.

This defendant has no knowledge, information or belief as to whether the cost of transporting live stock is greater than that of any of the other commodities mentioned in said Act, or whether the same reduces the rate thereon less than on salt, cement, lumber, lath or shingles. He has no knowledge, information or belief as to whether

the different articles transported on complainant's railway have been arranged in classes according to cost of carriage, price, risk of injury, bulk, volume of traffic, or any other circumstances, or have
71 remained in substantially the same classes for any period of time, or whether the same has been recognized, approved or enacted into law by any statutory classification in effect in Missouri:

He denies that any reduction in rates upon articles affected by the said Act of 1905 is unequal or partial or arbitrary as compared with any other commodities, or as between the commodities included in said Act. Or that the same works any injustice between shippers, purchasers or manufacturers of the State of Missouri, or deprives them of their property without due process of law, or deprives them of the equal protection of the laws, or operates to deprive the complainant of its property without due process of law, or deprives the complainant of the equal protection of the laws by any of the methods or for any of the reasons mentioned in said paragraph XIII of the bill of complaint. He denies that the Legislature had, or has, established maximum rates or charges for the transportation of all kinds of property, or that even if the Legislature had done so, any change effected in such rates by said Act of 1905 is presumably unfair or unreasonable in any respect. He denies that the Legislature requires the complainant to discriminate in favor of any persons or shippers, or to give them a right of transportation for a less rate than the general rate heretofore fixed by any law; or that such rate is less than is just and reasonable in view of the cost to the carrier and the value of the service rendered to the shipper.

XIII.

This defendant, further answering, avers that he is not a proper party defendant to the said bill of complaint, and that the same is wholly without equity as against this defendant.

72 ## XIV.

This defendant, further answering, says that he is informed and believes that this complainant and seventeen other railroad companies or corporations, owning and operating lines of railroad in the State of Missouri, immediately after the approval of said Act of 1905 agreed and came to an understanding with each other, that none of them would comply with the provisions thereof, or transport the commodities named in said Act at the rates mentioned therein, or make any effort to revise their schedules of rates for transporting the commodities mentioned in said Act and other commodities transported by them, in such a manner as to yield obedience to said Act, and at the same time derive a reasonable profit upon the fair valuation of their property necessary to carry on their interstate business, but determined, on concerted action among themselves, to disobey said Act, and to deny its validity and any obligation on their part to comply with it, and to bring suits, each of them for itself, on the day said Act should take effect, to enjoin the officers of the state from taking any action or discharging

any duties which might be imposed upon them by law in respect of said Act, and for the further purpose of obtaining a decree of this court adjudging said Act to be null and void upon the grounds stated in this complainant's bill of complaint.

This defendant further avers that in purusuance of said agreement and understanding, this complainant and the said seventeen other companies or corporations did, on the 16th day of June, 1905, each for itself, file in said court its bill of complaint, all of them being upon substantially the same grounds as those stated in this complainant's bill of complaint, and praying for substantially the same relief; and did on the same day, in each of said suits, obtain from this court a restraining order, directed to, and which was
73 served upon, the members of said Board of Railroad Commissioners, this defendant, and certain persons designated in said bills of complaint as shippers, enjoining this defendant and the said Board from performing any of the duties imposed upon them as state officials, by law, looking to the enforcement of the provisions of said Act, (for the express terms of which said order this defendant prays leave to refer to the same as it appears in the record of this cause), and afterwards, while said restraining order was in force, did obtain from this court a preliminary injunction in the terms of said order, which said preliminary injunction is still operative.

This defendant says that he is informed and believes that the rates fixed by said Act of 1905 do not affect all the articles of freight transported by the complainant in its interstate traffic, but that a very large number of articles, and a very large part of its interstate traffic, remain wholly unaffected and unregulated as to rates, by said Act or by any other existing statute. And this defendant says that the question of whether rates are compensatory or otherwise can only be determined upon a consideration of a schedule of rates which shall embrace every article and all the freight transported by the complaint in carrying on its intra-state business.

This defendant is informed and believes that the complainant, if it had chosen to do so, instead of attacking the reasonableness or fairness of the rates upon the few articles mentioned in the Act of 1905, might have revised its schedule of tariff of rates upon all the articles of freight transported by it in carrying on its interstate traffic, including those mentioned in said Act of 1905, in such a manner that the rates for carrying the articles not mentioned in said Act, would have been not unreasonable or unjust, either of itself or to
74 the public, and that the income derived by the complaint for performing the service of transporting freight at the rates and charges fixed in such a schedule would have been sufficient to assure to the complainant a fair and reasonable return upon the fair value of its property necessarily employed in the carrying on of such intra-state business.

This defendant further avers that the complainant afforded to the Board of Railroad Commissioners no opportunity, after said Act of 1905 took effect, to revise, adjust and fix a schedule of rates upon all the articles of freight transported by the complainant in its intra-state traffic, including those mentioned in said Act of 1905, in such

a manner that the provisions of said Act of 1905 would be observed, and at the same time the rates upon all other articles not mentioned in this Act should be not unreasonable or unjust, either to the complainant or to the public.

This defendant is informed and believes that if the complainant had failed to so revise or to attempt to so revise its schedule, the defendants, members of such Board, would, if they had been given the opportunity, which was denied to them by the injunction in this cause, in the discharge of the duties imposed on them by law, have attempted to fix and establish such a schedule of rates upon all the articles of freight transported by the complainant in its intra-state traffic, as would have observed or complied with the provisions of said Act of 1905, and in other respects have been not unjust or unfair either to the complainant or to the public, and he believes that they could have done so.

This defendant furthers says that by the issue of the restraining order and the preliminary injunction in this cause, the members of said Board have been prevented from fixing any such schedule or attempting to fix a schedule of rates which should be just
75 to the complainant and to shippers; that the complainant, by the filing of its bill before they, as such Board, could lawfully act in the premises, has unwarrantably assumed that they, as such Board, would fix and establish a schedule of rates which would be unjust to the complainant.

This defendant says that in view of the statutes of this state, which define the duties to be discharged by them, as such Board, this action ought not to be maintained, because it was brought before they had any opportunity to discharge any of such duties, or act in the matter of a general revision of the schedule of rates, made necessary by said Act of 1905.

This defendant denies that the complainant is entitled to any relief whatever against this defendant, without this, that any other matter, cause or thing in the complainant's said bill of complaint, or amendments thereto, contained material or necessary for this defendant to make answer unto, and not herein or hereby well and sufficiently answered, confessed, traversed and avoided or denied, is true to the knowledge or belief of this defendant; all which matters and things this defendant is ready and willing to aver, maintain and prove, as this Honorable Court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

HERBERT S. HADLEY,
Attorney General;
JOHN KENNISH,
Assistant Attorney General,
Solicitors for Defendants.

SANFORD B. LADD,
Of Counsel.

76 Afterwards, towit, on the 2nd day of December A. D. 1905 the joint and several answer of Charles M. Daily et al. was filed. Said answer is in words and figures as follows:—

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

2999.

QUINCY, OMAHA AND KANSAS CITY RAILROAD COMPANY, Complainant,

vs.

JOHN A. KNOTT, JOSEPH P. RICE and FRANK A. WIGHTMAN, Railroad Commissioners of the State of Missouri; Herbert S. Hadley, Attorney General of the State of Missouri; Charles M. Daily, William F. Davis, and James F. Robb, Defendants.

The Joint and Several Answer of the Defendants Charles M. Daily, William F. Davis and James F. Robb to the Bill of Complaint of the Quincy, Omaha and Kansas City Railroad Company, Complainant.

These defendants, respectively, now and at all times hereafter, saving to themselves and each of them all and all manner of benefit of exception or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in the said bill contained, for answer thereto or to so much thereof as these defendants and each of them are advised it is material or necessary for them and each of them to make answer to, answering, say, each one of them for himself:

77 I.

They admit the averments contained in paragraph I of said bill of complaint.

II.

As to whether said Act of 1905 is unconstitutional for any reason, these defendants have no knowledge, information or belief. All the other averments of paragraph II of said bill of complaint, these defendants admit.

III.

They admit each and every of the averments contained in paragraph III of said bill of complaint, except in these particulars. These defendants have no knowledge, information or belief as to the duties which the Railroad Commissioners or the Attorney General are required by law to do or perform.

IV.

They admit all the averments contained in paragraph IV of the bill of complaint, except in this particular: They have no knowl-

edge, information or belief as to whether they or any one of them represents any class of shippers.

V.

They admit all the averments contained in paragraph V of the bill of complaint, with these exceptions, to-wit: They have no knowledge, information or belief as to what the statutes of the State provide in respect of the duties of the Railroad Commissioners, or of any prosecuting attorney or of the Attorney General.

78 VI.

They admit each and every of the averments of paragraph VI of the bill of complaint.

VII.

They admit that the legislature of the State of Missouri, at its session of 1905, passed the act called in said bill of complaint, the Act of 1905.

As to whether shippers along the line of complainant's railroad are numerous, or daily engaged in making or receiving shipments of freight of the special classes designated in the Act of 1905, these defendants have no knowledge, information or belief.

They deny that they were intending or proposing to institute against the complainant any suit whatever to recover of the complainant any damages or any attorney's fees.

They have no knowledge, information or belief as to whether any other shipper is interested with these defendants, or any of them, and they deny that they, or any one of them, should defend for any such person.

As to each and every other allegation contained in said paragraph VII of the bill of complaint, these defendants say that they have no knowledge, information or belief.

VIII.

As to the truth of the averments and of each of them contained in paragraph VIII of said bill of complaint, these defendants say that they have no knowledge, information or belief.

IX.

79 These defendants have no knowledge, information or belief as to the truth of the averments, or any of them, contained in paragraph X of the bill of complaint.

XI.

These defendants have no knowledge, information or belief as to the truth of the averments, or any of them, contained in paragraph XI of the bill of complaint.

XII.

These defendants have no knowledge, information or belief as to the truth of the averments, or any of them, contained in paragraph XII of the bill of complaint.

XIII.

These defendants, further answering, say that none of them are proper parties defendant to the said bill of complaint and that each one of them has been improperly joined as a defendant herein; that there is no equity in said bill as against any one of them, and that in any event no costs ought to be adjudged herein against any of them.

These defendants deny that the complainant is entitled to any relief whatever against these defendants, or any of them without this, that any other matter, cause or thing in the complainant's bill of complaint or amendments thereto contained, material or necessary for these defendants to make answer unto, and not herein or hereby well and sufficiently answered, confessed, traversed and avoided or denied, is true to the knowledge or belief of these defendants; all which matters and things these defendants are ready and willing to aver, maintain and prove, as this honorable court shall direct,
80 and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

HERBERT S. HADLEY,
Attorney General;
JOHN KENNISH,
Assistant Attorney General;
Solicitors for Defendants.

SANFORD B. LADD,
Of Counsel.

81 In order to avoid unnecessarily encumbering the record, it is agreed, that admissions, denials and averments of want of knowledge, information and belief, contained in the foregoing answer, shall be taken and considered in every stage of this suit, with the same force and effect as if such admissions, denials or averments had mentioned specifically and in the language of the bill of complaint, the allegations thereof, which they are respectively intended to meet; that such admissions, denials and averments as to a number of allegations, as a whole, contained in the bill of complaint, shall have the same force and effect as if each of such allegations had been specifically referred to in the language of said bill of complaint.

FRANK HAGERMAN,
Solicitor for Complainant.
HERBERT S. HADLEY,
Attorney General;
JOHN KENNISH,
Assistant Attorney General,
Solicitors for Defendants.

SANFORD B. LADD,
Of Counsel.

82 Afterwards, towit, on the 17th day of February A. D. 1906 the replication of complainant to the answer of John A. Knott et al. was filed.

Said replication is in words and figures as follows:—

In the United States Circuit Court for the Western Division of the Western District of Missouri.

In Equity. No. 2999.

QUINCY, OMAHA & KANSAS CITY RAILROAD COMPANY, Complainant,
vs.
JOHN A. KNOTT et al., Defendants.

Replication of Complainant to the Answer of John A. Knott, Joseph P. Rice, and Frank A. Wightman, Railroad Commissioners.

This replicant, saving and reserving to itself all and all manner of advantages of exception which may be had and taken to the manifold errors, uncertainties and insufficiencies of the answer of the said defendants, for replication thereunto saith that it doth and will aver, maintain, and prove its said bill to be true, certain and sufficient in the law to be answered unto by the said defendants, and that the answer of the said defendants is very uncertain, evasive and insufficient in law to be replied unto by this replicant; without that that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed, or avoided, traversed, or denied, is true; all which matters and things this replicant is ready to aver, maintain and prove as this honorable Court shall direct, and prays as in and by its said bill it hath already prayed.

O. M. SPENCER,
J. G. TRIMBLE,
E. M. SHELTON,
FRANK HAGERMAN,
Solicitors for Complainant.

Received a copy of the foregoing replication, and it may be filed as of proper time.

HERBERT S. HADLEY,
Attorney General;
JOHN KENNISH,
SANFORD B. LADD,
Solicitors for said Defendants.

83 Afterwards, towit, on the 17th day of February A. D. 1906 the replication of complainant to the answer of Herbert S. Hadley, Attorney General, was filed. Said replication is in words & figures as follows:—

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2999.

QUINCY, OMAHA & KANSAS CITY RAILROAD COMPANY, Complainant,
vs.
JOHN A. KNOTT et al., Defendants.

Replication of Complainant to the Answer of Herbert S. Hadley, Attorney General.

This replicant, saving and reserving to itself all and all manner of advantages of exception which may be had and taken to the manifold errors, uncertainties and insufficiencies of the answer of the said defendant, for replication thereunto saith that it doth and will aver, maintain, and prove its said bill to be true, certain and sufficient in the law to be answered unto by the said defendant, and that the answer of the said defendant is very uncertain, evasive and insufficient in law to be replied unto by this replicant; without that that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed, or avoided, traversed, or denied, is true; all which matters and things this replicant is ready to aver, maintain and prove as this honorable Court shall direct, and prays as in and by its said bill it hath already prayed.

O. M. SPENCER,
J. G. TRIMBLE,
E. M. SHELTON,
FRANK HAGERMAN,
Solicitors for Complainant.

Received a copy of the foregoing replication, and it may be filed as of proper time.

HERBERT S. HADLEY,
Attorney General;
JOHN KENNISH,
SANFORD B. LADD,
Solicitors for said Defendant.

84 Afterwards, on the 17th day of February, A. D. 1906, the replication of complainant to the answer of William T. Davis, et al. was filed. Said replication is in words and figures as follows:—

In the United States Circuit Court for the Western Division of the Western District of Missouri.

In Equity. No. 2999.

QUINCY, OMAHA & KANSAS CITY RAILROAD COMPANY, Complainant,
vs.
JOHN A. KNOTT et al., Defendants.

Replication of Complainant to the Answer of William F. Davis, Charles M. Daily, and James F. Robb, Shippers.

This replicant, saving and reserving to itself all and all manner of advantages of exception which may be had and taken to the manifold errors, uncertainties and insufficiencies of the answer of the said defendants, for replication thereunto saith that it doth and will aver, maintain, and prove its said bill to be true, certain and sufficient in the law to be answered unto by the said defendants, and that the answer of the said defendants is very uncertain, evasive and insufficient in law to be replied unto by this replicant; without that that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed, or avoided, traversed, or denied, is true; all which matters and things this replicant is ready to aver, maintain and prove as this Honorable Court shall direct, and prays as in and by its said bill it hath already prayed.

O. M. SPENCER,
J. G. TRIMBLE,
E. M. SHELTON,
FRANK HAGERMAN,
Solicitors for Complainant.

Received a copy of the foregoing replication, and it may be filed as of proper time.

HERBERT S. HADLEY,
Attorney General;
JOHN KENNISH,
SANFORD B. LADD,
Solicitors for said Defendants.

85 Afterwards, to-wit, on the 26th day of February, 1906, a Motion to Refer case to a Master or appoint an Examiner was filed. Said Motion is in words and figures as follows:—

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 2999.

QUINCY, OMAHA AND KANSAS CITY RAILROAD COMPANY, Complainant,

vs.

JOHN A. KNOTT, JOSEPH P. RICE, and FRANK A. WIGHTMAN, Railroad Commissioners of the State of Missouri; Herbert S. Hadley, Attorney General of the State of Missouri; Charles M. Daily, William F. Davis, and James F. Robb, Defendants.

The defendants, John A. Knott, Joseph P. Rice and Frank A. Wightman, Railroad Commissioners of the State of Missouri, and Herbert S. Hadley, Attorney General of the State of Missouri, pray and move the court to make an order referring this cause to one of the standing masters of the court or to a Special Master to be appointed by the court, under proper directions therefor, to take the evidence herein and report the same to the court, with or without findings of fact by such Master, with all convenient speed, or an order appointing an examiner to take the testimony in the cause and return such testimony into court with all convenient speed.

HERBERT S. HADLEY,
Attorney General;
JOHN KENNISH,
Assistant Attorney General;
Solicitors for Defendants.

SANFORD B. LADD,
Of Counsel.

86 Afterwards, to-wit, on the 27th day of February, 1906, a motion for oral hearing in open court was filed. Said motion is in words and figures as follows, to-wit:—

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 2988.

ST. LOUIS AND SAN FRANCISCO RAILROAD COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, and Joseph P. Rice, John A. Knott, and Frank A. Wightman, Railroad Commissioners of the State of Missouri, et al., Defendants.

No. 2989.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

No. 2990.

THE ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

No. 2991.

THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

No. 2992.

THE ST. LOUIS, KANSAS CITY & COLORADO RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

No. 2993.

THE KANSAS CITY SOUTHERN RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

87

No. 2994.

THE ST. LOUIS & HANNIBAL RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

No. 2995.

THE MISSOURI PACIFIC RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

No. 2996.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY, Complainant,
VS.
SAME, Defendants.

No. 2997.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY, Complainant,
VS.
SAME, Defendants.

No. 2998.

CHICAGO, BURLINGTON & QUINCY RAILWAY COMPANY, Complainant,
VS.
SAME, Defendants.

No. 2999.

QUINCY, OMAHA AND KANSAS CITY RAILROAD COMPANY, Complainant,
VS.
SAME, Defendants.

No. 3000.

THE WABASH RAILROAD COMPANY, Complainant,
VS.
SAME, Defendants.

No. 3001.

THE ST. JOSEPH & GRAND ISLAND RAILWAY COMPANY, Complainant,
VS.
SAME, Defendants.

88 No. 3002.

KANSAS CITY, CLINTON & SPRINGFIELD RAILWAY COMPANY, Complainant,
VS.
SAME, Defendants.

No. 3003.

CHICAGO GREAT WESTERN RAILWAY COMPANY, Complainant,
VS.
SAME, Defendants.

No. 3004.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY, Complainant,
VS.
SAME, Defendants.

No. 3006.

THE CHICAGO & ALTON RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

Motion.

Complainant in each one of the above entitled causes moves the court to set this case down for hearing upon evidence to be adduced orally in open court on final hearing.

FRANK HAGERMAN,
Solicitor for Complainants.

The above motion may be treated as if separately made and filed in each of above cases, and due and timely notice thereof is acknowledged.

HERBERT S. HADLEY,
JOHN KENNISH,
SANFORD B. LADD,
Solicitors for the Answering Defendants.

89 Afterwards, to-wit, on the 5th day of March, 1906, the following order was filed and entered of record:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD CO., Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendants.

Also

In Equity.

RAILROAD COMPANIES
vs.
HE-BERT S. HADLEY, Attorney General of the State of Missouri, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003 3004, and 3006.

Order.

The applications, in the nature of a motion, of the complainants for an oral hearing in open court of the evidence herein, and the motion of the defendants for a reference to a Master or the appoint-

ment of an Examiner to take the testimony herein, having been submitted to the court, and the causes being at issue, the court decides to refer the same to a Special Master.

It is accordingly ordered that the above numbered causes be, and they are hereby, referred to Frank L. Scofield, Esq., as Special Master, with directions to take the evidence orally on the issues involved, and to report his findings of facts thereon to the court at the earliest time practicable, together with the evidence in the causes.

(1) He shall so hear, and only until the court otherwise orders, such above numbered causes as the parties by their counsel shall at the beginning of the inquiry agree to be heard.

90 (2) The Special Master, on reasonable notice, by mail or otherwise, deemed by him most advisable, to the counsel of the respective parties, shall fix the times and places for the taking of testimony, and he is authorized to fix the same as to him may seem most convenient to the parties in interest, having regard to the suitability and necessity of such times and places.

(3) The Special Master is authorized to employ a competent and reliable stenographer, whose compensation shall be determined by the court, to take down the testimony and reduce the same to writing.

(4) The court directs that the Special Master shall proceed, after the beginning of the taking of testimony, with all reasonable speed, as it is important to all concerned that the hearing of the causes shall be expedited. To this end, the Special Master will require respective counsel to present their testimony promptly, and confine the same to the issues involved, in order to avoid, as far as practicable, the growing evil in practice before Masters of unduly burdening the record with irrelevant and immaterial matters and the litigants with unnecessary costs.

(5) The Special Master shall permit any pleadings to be amended as by Equity Rule provided, and rule upon the admissibility of any evidence, and may refer to the court any question which arises before him in the progress of the hearing.

(6) The Clerk of this court will forthwith furnish the said Special Master with a certified copy of this order, and without further or special order turn over to said Special Master, taking his receipt therefor, any pleadings or court papers pertaining to the causes being investigated by him, on his request made therefor.

(Signed) JNO. F. PHILIPS, *Judge.*

91 Afterwards, to-wit, on the 11th day of June, 1907, a Motion was filed. Said Motion is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD CO., Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendants.

Also

In Equity.

RAILROAD COMPANIES
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004, and 3006.

Motion.

Now comes complainant in each of the above entitled causes and moves the court for leave to file an amended and supplemental bill seeking to enjoin the enforcement of the various acts of the legislature regulating rates adopted at the session in 1907, and making as additional parties defendant H. R. Oglesby, Railroad Commissioner, and the county judges and treasurers of the counties through which each of the complainant's lines run, together with citizens traveling upon the road of each complainant as passengers, all as will be more fully shown by the amended and supplemental bill to be presented upon the hearing of this motion.

FRANK HAGERMAN,
Solicitor for Complainants.

92 Afterwards, to-wit, on the 13th day of June, 1907, the following restraining order was filed and entered of record:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2999.

QUINCY, OMAHA & KANSAS CITY RAILROAD COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendants.

Order.

The complainant upon this June 13th, 1907, asked, pending a hearing of the application to file an amended and supplemental bill,

the general form of which has been submitted to the court, the right to temporarily file same and for a restraining order, but in as much as said application to file the bill for a temporary injunction has been set and noticed for hearing upon June 14th, 1907, at the first time convenient to the court, and it appearing to the court that it is desirable that a full argument be had after notice, yet that great harm might be done and much confusion arise if the status quo should be changed, and that it is to the best interest of the public and all parties interested that such status quo should be maintained until such hearing, it is therefore, upon the court's own motion, ordered that until further order herein, the complainant, its officers, agents and employés be and they are hereby restrained from putting in force the maximum freight and passenger rates provided by the legislative acts of 1907 mentioned in said bill and from complying with said acts, and the application for a restraining order will be heard with that for leave to file said amended bill.

(Signed) SMITH McPHERSON, *Judge.*

93 Afterwards, to-wit, on the 14th day of June, 1907, the following order was filed and entered of record, to-wit:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 2999.

QUINCY, OMAHA & KANSAS CITY RAILROAD COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendants.

Order.

The complainant upon this June 14th, 1907, presented its amended and supplemental bill, and asked leave to file the same and for a restraining order or temporary injunction. The Court was advised by the Assistant Attorney General, who appeared, that the Attorney General is absent and desired to be heard, and in the meantime, that suits were this day by the Attorney General instituted in the Circuit Courts of the State to require the various railroad companies of the State to put in force the rates fixed by the acts of the Legislature mentioned in the bill. It is thereupon ordered that the matter be set down for hearing upon the 15th day of June, 1907, at 2 o'clock p. m., and the supplemental bill herein shall be deposited with the clerk. And it appearing to the court that it is desirable that a full hearing be had of the various matters, yet that great harm might be done and much confusion arise if the status quo should be changed, and that it is to the best interest of the public and all parties interested that such status quo should be maintained until such hearing, it is therefore, upon the Court's own motion, again ordered that until further order herein, the complainant, its officers,

agents, and employés, be and they are hereby restrained from
94 putting in force the maximum freight and passenger rates provided by the legislative acts of 1907 mentioned in said bill and from complying with said acts, and the application for a restraining order and temporary injunction will be heard with that for leave to file said amended bill.

(Signed) SMITH McPHERSON, *Judge.*

95 Afterwards, to-wit, on the 15th day of June, 1907, a Notice was filed. Said Notice is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD CO., Complainant,

vs.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendants.

Also

In Equity.

RAILROAD COMPANIES

vs.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004 and 3006.

Notice.

To Defendants and their counsel:

Complainants will at the court room at Kansas City, Missouri, upon June 14th, 1907, at ten o'clock A. M., or as soon as counsel can be heard, ask leave of court to file an amended and supplemental bill in each of the foregoing cases, in substantial form shown by copy hereto attached, and at the same time ask for a temporary injunction.

FRANK HAGERMAN,
Solicitor for Complainants.

Received copy of this notice June 11, 1907.

HERBERT S. HADLEY,
Solicitor for Defendants.

96 Afterwards, to-wit, on the 17th day of June, 1907, the following order was filed and entered of record, to-wit:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 2999.

QUINCY, OMAHA & KANSAS CITY RAILWAY COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendants.

Order.

This cause came on for hearing this 17th day of June, 1907, the parties appearing by their counsel in response to notice, and the court being fully advised in the premises, orders and adjudges:

1. Complainant's motion for leave to file an amended and supplemental bill is sustained and such leave is given, the same to be filed as of June 11th, 1907.

Upon such filing, process shall be issued so that if the court hereafter decides that the ends of justice require, and the rules of equity permit, the said bill may be treated as an amended, supplemental, ancillary, dependent or original bill.

To said bill, each of the parties named therein shall be and is hereby made a party.

2. Complainant's application for a temporary injunction is, as to the maximum freight laws of 1907, sustained. Until the further order of court herein, the defendants and each of them are enjoined from doing any act, attempting to recover any penalty, seeking to enforce or having enforced, or asserting any claim or right under or by virtue of either of the maximum freight rate acts of 1907 mentioned in said amended and supplemental bill, to the end that each defendant as to each of said acts of 1907 be restrained as
97 effectually as the defendants were enjoined by the temporary injunction heretofore issued herein as to and in connection with the act of 1905. By consent of complainant, the injunction bond heretofore filed shall stand as applicable to this order, the same as if it were executed and filed this day.

3. As to the passenger act of 1907, the order heretofore entered upon the court's own motion, shall remain in force until June 19th, 1907, at six o'clock a. m., at which time the rates fixed by said act shall be put and kept in force for three months without prejudice to the rights of either party for the purpose of ascertaining more definitely the extent that experience will show that the rates under said act reduce or increase the earnings of complainant.

The court reserves the power upon the application of any person interested, to hereafter make such further or other order upon this subject as it deems proper.

4. Pending the further hearing and final determination of this case, the complainant shall preserve and keep in existence its waybills for state freight.

(Signed) SMITH McPHERSON, *Judge.*

98 The amended and supplemental bill so filed on the 11th day of June, A. D. 1907, is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2999.

QUINCY, OMAHA AND KANSAS CITY RAILROAD CO., Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendants.

Complainant's Amended and Supplemental Bill.

To the Honorable Judges of the Circuit Court Aforesaid:

Your orator, by leave of court, brings this, its amended bill and thereupon avers:

1. Upon the 16th day of June, 1905, it filed herein against the defendants in the above entitled case its original bill, (reference to which is now made the same as if copied herein), seeking to enjoin as illegal, unconstitutional and confiscatory the enforcement of the provisions of an act of the legislature of the State of Missouri (herein called the "Act of 1905"), seeking to fix certain maximum freight rates.

2. The said legislature also passed in 1905 an act approved April 14, 1905, in words and figures as follows:

"Corporations, Private: Railroad Classification. Charges—Commissioners.

An Act to Amend Article IV, Chapter 12, of the Revised Statutes of Missouri of 1899, Entitled 'Railroad Classification, Charges, Commissioners,' by adding a New Section Thereto, to be Known as Section 1195a.

Section 1. Fixing charges for carrying undressed stone, crushed rock and building or paving brick.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION 1. That article IV, Chapter 12, of the Revised Statutes of Missouri of 1899, entitled 'Railroad Classification, Charges, Commissioners,' be, and the same is hereby amended by adding a new section thereto, to be known as Section 1195a, to read as follows:

99 SECTION 1195a. No individual, company or corporation owning, operating, managing or leasing any railroad or part of a railroad in this State, shall charge for or receive for carrying a carload of forty thousand pounds of undressed stone, sand or building or paving bricks more than forty cents per ton for the first ten

miles, twenty cents per ton for the second ten miles, or more than five cents per ton for each additional ten miles, and any excess in weight shall be charged for at the same rate per ton as for an even carload.

Approved April 14, 1905."

3. Since the filing of said original bill and upon or about January 1, 1907, the office of the said Joseph P. Rice as a railroad and warehouse commissioner expired by limitation of the time for which he was elected and H. R. Oglesby has been duly elected and qualified as his successor, and is now acting as such. It is, therefore, proper that he should be made a party defendant hereto.

4. Each of the railroad companies operating railroads in the State of Missouri at the same time filed in this court original bills to the same purport and for the same purpose, against said members of the Railway and Warehouse Commissioners and the Attorney General and certain shippers upon the line of its road. Such proceedings were had therein that temporary injunctions were issued, the causes were put at issue and duly referred to the Honorable Frank L. Schofield to take certain proofs and make certain findings of fact. The parties agreed that before taking the evidence in all the cases, they would first take that in three of them, temporarily suspending the taking of further testimony in the others. In accordance with said agreement the evidence was taken in the three cases instituted by the Missouri Pacific, Wabash and Chicago, Burlington & Quincy Railway Companies, and the said causes are now ready for submission to the special master upon the original bills so filed, and have been set for argument before him upon June 18, 1907.

5. The Governor of the State, in giving his written reasons for approving the Act of 1905, indicated that it was with some reluctance that he signed same, expressly stating that "the rate on live stock seems unjust." So at the time of submitting his biennial general message to the 43rd General Assembly of the State, he called attention to the litigation aforesaid, and suggested a modification and amendment of the law to meet fatal defects therein. Thereafter, on February 27, 1907, he sent a special written message to the legislature, in which, among other things, he said in reference to the Act of 1905:

100

"The statute enacted by the last General Assembly is defective in the penalty clause, which applies only to railroads. The penalty should be made to apply to persons, corporations and partnerships. The cattle clause should be corrected in the light of the testimony adduced in the freight litigation so as to fix these rates at an amount that will stand the test of the judicial crucible."

6. Pursuant to this request and the acknowledgment thus made of the invalidity of the existing law, the enforcement of which was sought to be enjoined by the original bill, the legislature passed an act (herein called the Act of 1907) which will take effect on June 14, 1907, in words and figures as follows:

"Corporations, Private: Railroads—Freight Charges.

An act to repeal an act of the 43rd general assembly, approved April 15, 1905, entitled 'An act to amend chapter 12 of the Revised Statutes of Missouri, revision of 1899, entitled "Corporations, private," by repealing section 1194 of said Revised Statutes, being part of article IV of said chapter, concerning railroad classification, charges, commissioners, and to enact in lieu thereof the following new sections providing for the regulation of freight charges by railroads and the recovery of penalties for the violation thereof,' and to repeal an act of the 43rd General Assembly, approved April 14, 1905, entitled 'An act to amend article IV, chapter 12, of the Revised Statutes of Missouri, 1899, entitled "Railroad classifications, charges, commissioners," by adding a new section thereto, to be known as section 1195*a*, fixing the charges for carrying undressed stone, crushed rock and building or paving brick,' and to enact in lieu thereof certain new sections, to be known as sections 1194, 1194*a*-1, 1194*b*-1 and 1194*c*-1, providing for the regulation of freight charges by railroads and prescribing the punishment for a violation thereof, which new section shall read as follows:

SECTION 1194. Classification and charges for carrying freight in car load lots.
SECTION 1194*a*. Penalty for violation.
SECTION 1194*b*. Not to relieve railroad from complying with other laws.
SECTION 1194*c*. Repealing conflicting acts.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION 1. That sections 1194, 1194*a* and 1194*b* of an act of the 43d general assembly, approved April 15, 1905, concerning railroad classifications, charges, commissioners, and providing for a
101 penalty for a violation thereof, said sections being enacted in lieu of section 1194, chapter 12 of the Revised Statutes of Missouri, 1899, in "corporations, private," and section 1195*a* of an act of the 43rd general assembly, approved April 14, 1905, concerning railroad classifications, charges, commissioners, fixing charges for carrying undressed stone, crushed rock and building or paving brick, be and the same are hereby repealed, and the following, to be known as sections 1194, 1194*a*-1, 1194*b*-1 and 1194*c*-1 of said Revised Statutes are enacted in lieu thereof.

SECTION 1194. No individual, company or corporation owning, operating, managing or leasing any railroad, or part of railroad, designated in section 1191 as in classes A, B, or C, shall demand, charge or receive a greater or higher rate for carrying from initial to terminal points in this state articles named in the several classes and the commodities herein designated than is hereinafter provided for, namely: Class D, in car loads of 40,000 pounds minimum weight, not exceeding five cents per one hundred pounds for the

first twenty-five miles, and not exceeding one-half cent per hundred pounds for the second twenty-five miles, or fractional part thereof, and not exceeding one-half cent per hundred pounds for each additional twenty-five miles or fractional part thereof. Class E, in car loads of 24,000 pounds minimum weight, not exceeding five cents per one hundred pounds for the first twenty-five miles, and not exceeding one-half cent per hundred pounds for the second twenty-five miles or fractional part thereof, and not exceeding one-half cent per hundred pounds for each additional twenty-five miles or fractional part thereof. Class F, in car loads of 30,000 pounds minimum weight, not exceeding five cents per one hundred pounds for the first twenty-five miles, and not exceeding one-half cent per hundred pounds for the second twenty-five miles or fractional part thereof, and not exceeding one-half cent per hundred pounds for each additional twenty-five miles or fractional part thereof. Class G, in car loads of 30,000 pounds minimum weight, not exceeding five cents per one hundred pounds for the first twenty-five miles, and not exceeding one-half cent per hundred pounds for the second twenty-five miles or fractional part thereof, and not exceeding one-half cent per hundred pounds for each additional twenty-five miles or fractional part thereof. Class H, in car loads, in common cars, measuring inside from 29 feet to and including 30 feet and 6 inches in length (to be known as standard cars), not exceeding $8.00 per car load for the first twenty-five miles, and not exceeding $4.00 per car load for the second twenty-five miles or fractional part thereof, and not exceeding $2.00 per car load for each additional twenty-five miles or fractional part thereof of over twelve miles. For the carriage of any of the articles comprising class H, in cars of other lengths for the distances above specified, the following percentages of the foregoing rates per car load shall not be exceeded, namely: In cars of length less than 29 feet, 94 per cent; in cars of length over 30½ feet to and including 32 feet, 104 per cent; in cars of length over 32 feet to and including 33 feet and 9 inches, 107 per cent; in cars of length over 33 feet and 9 inches to and including 36 feet, 110 per cent; in cars of length over 36 feet to and including 38 feet, 113 per cent; in cars of length over 38 feet to and including 40 feet, 116 per cent; in cars of length over 40 feet to and including 42 feet, 125 per cent; in cars of length over 42 feet to and including 44 feet, 135 per cent; in cars of length over 44 feet, 140 per cent of the rates herein specified for cars of the standard length of 29 feet to and including 30 feet and 6 inches shall not be exceeded. All the foregoing lengths to be taken by inside measurements. Class 1, in car loads of 20,000 pounds minimum weight, not exceeding $14.00 per car load for the first twenty-five miles, and not exceeding $2.00 per car load for the second twenty-five miles or fractional part thereof, and not exceeding $2.00 per car load for each additional twenty-five miles or fractional part thereof. For a car load of 40,000 pounds of minimum weight undressed stone, crushed rock,
102 sand, railroad ties, cordwood, building or paving brick, not exceeding 40 cents per ton of 2,000 pounds to the ton for the first fifty miles or fractional part thereof, and not exceeding five cents

per ton per car load for the next ten miles or fractional part thereof, and not exceeding 5 cents per ton per car load for each additional ten miles or fractional part thereof. In computing the rate of freight, according to the provisions of this article, the distance shall be computed from the point where it is received to the point of destination in the state, notwithstanding it may pass from one road to another.

SECTION 1194*a*. Any individual, company or corporation owning, operating, managing or leasing any railroad, or part of railroad, designated in section 1194, or any officer, agent, representative or employee thereof who violates the provisions of section 1194, shall be adjudged guilty of a misdemeanor and, on conviction, shall be punished by a fine of not to exceed $5,000.00: Provided, that the money received from any fine under the provisions of this act shall be paid into the school fund in the county in which the case is prosecuted.

SECTION 1194*b*. This act shall not have the effect of relieving any person, partnership or corporation, owning or operating any railroad in this state from any liability or penalty heretofore incurred for failure to comply with any law of this state.

SECTION 1194*c*. All acts and parts of acts, and all rules and regulations, freight schedules, classifications and groupings by railroad companies, or the railroad and warehouse commissioners of this state, in conflict with the provisions of this act, are hereby repealed and declared void.

Approved March 19, 1907."

By this act an attempt was made to comply with the request of the Governor and to repeal the said Act of 1905, together with that mentioned in paragraph 3 hereof, with the exception that no penalty or liability incurred should be affected by such repeal, the purpose and intention of defendants being to attempt to enforce against your orator all penalties which accrued if the said acts are held to be illegal.

7. In addition thereto, the legislature in 1907 passed certain acts which will take effect upon June 14, 1907, being in words and figures as follows:

"Corporations, Private: Railroads—Freight Charges.

An Act to Amend Article 4, Chapter 12, Revised Statutes of Missouri of 1899 by Adding a New Section Thereto, to be Known as Section 1195*a*, and Relating to Freight Charges and Classifications.

SECTION 1. Fixing freight charges on fruits.
SECTION 2. Inconsistent acts repealed.
SECTION 3. Penalty for violation.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION 1. That article 4, chapter 12, of the Revised Statutes of Missouri, 1899, entitled 'Railroad classification, charges, commis-

sioners,' be and the same is hereby amended by adding a new section thereto, to be known as section 1195*a*, which said section shall read as follows:

SECTION 1195*a*. No individual, company or corporation owning, operating, managing or leasing any railroad or part of rail-
103 road in this state, shall charge for or receive for carrying apples and pears in car loads of 24,00[0] pounds minimum weight, more than six cents per hundred pounds for the first twenty-five miles or fractional part thereof, and not more than one cent per hundred pounds for each additional twenty-five miles or fractional part thereof. For strawberries, peaches, grapes and other berries in car loads of 18,000 pounds minimum weight, not exceeding fifteen cents per hundred pounds for the first twenty-five miles or fractional part thereof, and not exceeding two cents per hundred pounds for each additional twenty-five miles or fractional part thereof.

SEC. 2. All acts and parts of acts and all rules and regulations, freight schedules, classification[s] and grouping[s] by railroad[s] companies, or the railroad and warehouse commissioners of this state, in conflict with the provisions of this act, are hereby repealed and declared void.

SEC. 3. Any individual company or corporation owning, operating, managing or leasing any railroad or part of a railroad in this state, violating the provisions of this act, shall, on conviction, be adjudged guilty of a misdemeanor, and subject to a fine of not to exceed one thousand dollars for each offense.

Approved March 19, 1907."

"Corporations, Private: Railroads.

An Act to Provide Transportation on Railroads for the Shippers of Freight in this State in Carload Lots.

SECTION 1. Railroads to issue to certain shippers transportation.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION 1. Whenever any railroad company or corporation doing business within the limits of this state shall receive any live stock to be shipped over the said road or roads by carload lots, said corporation shall, in consideration of the price paid for said carload lots, issue to the shipper, his agent or employee, at the time of making out the contract or bill of lading, a round trip ticket to and from said points designated in said bill of lading, without further expense to said shipper, provided that the points of destination are within this state, and in case said point of destination is without this state, then said railroad corporation shall issue to such shipper, his agent or employee, a round trip tricket to a point within this state nearest to the point without this state to which said shipment of live stock is shipped: Provided, that in case said shipper shall ship more than one car load at any one shipment the said railroad corporation shall not be compelled to give to said shipper more than one round trip ticket with such shipment, which said ticket shall be good on the

freight train on which said stock is shipped, and on all trains on said road carrying passengers on the return trip, and shall be good for a period of ten days, and any railroad company or corporation willfully violating the provisions of this section, or which shall fail, neglect or refuse to furnish and deliver such ticket to such shipper, his agent or employee, shall forfeit and pay, as a penalty, to said shipper, not less than three hundred dollars nor more than five hundred dollars, to be recovered by civil action in any court of competent jurisdiction.

Approved April 4, 1907."

8. All the averments of the original bill apply to the said Act of 1907 and also to each of the acts mentioned in paragraph 7 hereof,
except that if for the classes of freight mentioned in the said
104 Acts of 1907 alone, or in all the Acts of 1907, your orator
should charge the maximum rate therein authorized and practically capable of being charged, its total gross receipts from state traffic would be reduced in a very large sum, which though differing in items would not be as a whole substantially less than that mentioned in the original bill as to the Act of 1905. Each of said freight Acts of 1907 is violative of the provisions of the constitution to the same extent as was alleged as to the Act of 1905. But the freight Acts of 1907 did not so correct the evils of the former laws as set forth in the original bill, and the rates were thereby fixed at amounts that were unreasonable, and confiscatory, and less than the cost of the service.

9. The Governor in calling for the passage of said Act of 1907, and the legislature in passing the same, did so for the avowed purpose of increasing certain of the maximum rates of the Act of 1905 which they conceived had in this litigation been proved to be unreasonable and confiscatory and could not be enforced. Notwithstanding this, the rates as finally so fixed, considered alone, were not upon such a basis as would return any reasonable or fair compensation to the complainant upon the value of that portion of its property devoted to such use. Even if the laws in existence in 1905 relative to passenger fares, had remained in force, still the freight rates as fixed by the said Acts of 1907 would have been unreasonable and confiscatory, and would not have given any just return upon the value of that portion of your orator's property as a whole devoted to state traffic. However, the legislature of the state, without any fixed or definite knowledge upon the subject of rates, erroneously conceived that if the increase as aforesaid in the freight rates were necessary and were made, there could be a general equalization of rates by a decrease in the passenger rates and so in substance they could be legally overcome and offset any advantage from the increase in freight rates by decreasing the maximum rates to be charged
for state passenger traffic about thirty-three and one-third
105 per cent, and thus, while defeating pending litigation, the
public as a whole would not be the loser. The result was that at the same session, and as part and parcel of one transaction, and substantially as one law, and to accomplish such purpose, there was passed and the Governor approved, an act herein called the "Passen-

ger Act," which, if valid, will take effect on June 14, 1907. The same reads as follows:

"Corporations, Private: Railroads—Passenger Rates.

An act to repeal sections 1191 and 1192 of chapter 12, article 4, Revised Statutes of Missouri, 1899, entitled 'Railroad classification—charges—commissioners,' by striking out sections 1191 and 1192 and enacting the following new sections in lieu thereof, to be known as sections 1191 and 1192 and 1192*a*.

SECTION 1191. Classification of railroads.
SECTION 1192. Passenger charges regulated.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION 1. That all of sections 1191 and 1192 of chapter 12, article 4 of the Revised Statutes of Missouri, 1899, be and the same are hereby repealed and three new sections be enacted in lieu thereof, to be known as sections 1191 and 1192 and 1192*a*, so that said sections shall read as follows:

SECTION 1191. Roads classified.—All railroads in the state of Missouri are hereby divided into four classes, to be known as class A, class B, class C and class D. Class A shall include all through or trunk line railroads and all branch roads owned, leased, controlled or occupied by such through or trunk line railroad companies or corporations. Class B shall include all other railroads or parts of railroads owned, leased, controlled or occupied, or which may hereafter be owned, leased, controlled or occupied, either wholly or in part, by any trunk line company or corporation. Class C shall include all other railroads of a greater length than forty-five miles. Class D shall include all roads less than forty-five miles in length not owned, leased, controlled or occupied by any trunk line company or corporation.

SECTION 1192. Passenger charges regulated.—Any individual, company or corporation owning, operating, controlling or leasing any railroad or part of a railroad in this state, in the several classifications as herein prescribed, shall be limited to a compensation per mile, for the transportation of any person with ordinary baggage not exceeding one hundred pounds in weight, as follows: In classes A, B and C, not exceeding two cents per mile, and in class D, not exceeding four cents per mile: Provided, that no such individual, company or corporation shall charge, demand or receive any greater compensation per mile for the transportation of children of the age of twelve years or under than one-half of the rate above prescribed; and provided further, that the rates for transportation herein prescribed may be reduced, as hereinafter provided.

SECTION 1192*a*. Any individual, company or corporation, or any agent or officer thereof, who shall violate any of the provisions of section 1192 of this act, shall be deemed guilty of a misdemeanor, and upon conviction, shall pay a fine of not less than one hundred nor more than five hundred dollars.

Approved February 27, 1907."

10. All the averments of the original bill apply to said Passenger Act. It is violative of each constitutional provision mentioned, and subject to each objection made, in the original
106 bill to the Act of 1905, and all the facts there averred as to why the Act of 1905 should be held to be void and action thereunder restrained, are not only true as to the Acts of 1907 but also as to said Passenger Act. If enforced, it will reduce the earnings of your orator from said passenger business in the practical and ordinary operation of its road, substantially one-third The state passenger earnings for the year 1906 were in the aggregate substantially one hundred and ninety one thousand, eight hundred, fifty six 35/100 dollars, $191,856.35 and yet, if the Passenger Act as aforesaid had been applied thereto, said earnings would have been reduced at least to the sum of One Hundred twenty seven thousand nine hundred, four & 24/100 dollars, ($127,904.24) or an annual loss of Sixty three thousand, nine hundred fifty two & 11/100 dollars $63,-952.11. The property of your orator in the state is used as a whole both for state and interstate freight and passenger business, and, as such, is quite valuable. The value of that portion devoted to the carriage of state business, considered as a whole, or separately as to the passenger business only, is such that in either case the reduction in rates by said Passenger Act would not only fail to make any reasonable return on such valuation, but would cause such business to be done at an actual loss.

11. The said Passenger Act was passed for the avowed purpose of reducing the state passenger rates of your orator so as to offset and overcome a supposed increase of certain of the state freight rates made under the Act of 1907, and the attempt was made to frame each act so as to avoid the injunctive relief in this and in each action heretofore instituted by the other railroad companies operating lines in Missouri. As your orator is informed and believes, the state and defendants now unjustly and improperly claim that since upon the face of these acts provision is only made for general penalties, there is no remedy by injunction; that the original bill can no longer be maintained, and that the state through its officers is entitled
107 to have enforced the various statutory penalties for each shipment made and each passenger carried at a rate in excess of that fixed by the freight Acts of 1907 and the said Passenger Act, as well as penalties under the abandoned Act of 1905.

As to the said contentions, your orator respectfully submits:

(*a*) Such view, if adopted, would result in a multiplicity of suits, the harassment of your orator, and tedious and expensive litigation, because if an injunction be not herein granted, and said acts be not complied with, many suits and prosecutions will be brought and many fines and penalties imposed and no opportunity will be afforded to your orator to present its claim of the unconstitutionality of said act and the confiscatory nature of the rates fixed. Such an inquiry involves the examination of long and tedious accounts, the study of books and papers and an expert knowledge of the trier of fact, none of which could be properly had in the many trials to be had in a court of law to enforce the penalties. Hence the result

would be pending the inquiry, your orator would be required to put in and enforce said rates to its irreparable damage, because it would be compelled, pending the litigation, to carry traffic at the reduced rates with no practicable way of recovering the difference between the rates now charged and as so reduced.

(*b*) The real purpose of the original bill was to determine whether that portion of the property of your orator devoted to state business could, if the Act of 1907 were enforced, receive such return upon its value as would be fair, reasonable and not confiscatory. Upon the trial of the three cases heard by the special master, such was the theory adopted by both parties, and the proofs were by both of them directed to that end. In view of this situation, it is respectfully submitted that the full determination of all questions of rates in the pending cases can not be defeated or impaired by the repeal by the state legislature of the particular act questioned by the original bill and the passage of another and different act in such
108 form as to prevent any adequate relief from a court of equity and to remit a complainant to a defense in numberless actions of law to recover penalties. But if the rights of the parties should be ascertained by a court of equity, this can be done adequately through the injunctive process, surrounded and controlled by such conditions as may be proper and just in the premises.

(*c*) It would be unjust and inequitable to permit officers of the state to claim that the validity of an act alleged to be confiscatory in its nature should be determined in a way other than would afford a full and fair hearing, which can only be by the processes of a court of equity. In order that there may be the fullest and fairest hearing of the controversy, your orator consents that any state officer, or any private person or corporation may appear herein and show, if they can, why the rates fixed in the acts aforesaid are lawful, reasonable or enforcible, and that the court may make any reasonable order to protect the public and speed the hearing.

(*d*) Each of the special duties devolving upon the members of the Board of Railroad Commissioners and the Attorney General, as stated in the original bill, applies to the Acts of 1907 and the Passenger Act aforesaid, so that even as an original bill, this proceeding could be maintained.

(*e*) The constitution of the state provides that all penalties such as are attempted to be prescribed for the violation of the acts herein mentioned go to the school-fund of the various counties, and the statutes of the state impose the special duty of collecting the same and preserving and investing the proceeds thereof, upon the county court and the treasurers of the respective counties of the state Joseph M. Patterson, Charles E. Moss and George Dodd are the judges of the county, and Arthur C. Warner is treasurer, and each is a resident and citizen of the county of Jackson, Missouri through
109 which the line of your orator passes, and from and to which there is transported a very large part of the state and passenger traffic, the maximum rates for carriage of which are fixed by said Acts of 1907 and said Passenger Act. Each of said judges and

said treasurer is hereby made a defendant. Each proposes and intends and will, unless restrained herein, seek to enforce and collect the penalties provided for in the said acts. In view of the fact that the line of your orator's road is not confined to one county, it is inconvenient, impracticable, expensive, and hence, unnecessary to make the county judges and the treasurer of each county parties hereto, but such as are named can be, and are sued as a class so that others similarly situated may, if they desire, appear herein and be heard upon their own behalf or through those now made parties, or, if necessary, be brought in by process of court and required to make defense.

(*f*) F. M. Riley, R. E. Sceane and H. B. McIntyre, are citizens and residents of Clinton county, Missouri, who constantly travel over your orator's road, who have demanded and supported the passage of the Passenben Act aforesaid, and threaten to and will seek to enforce its provisions unless the rates therein fixed are established and put in force. They are hereby made defendants, and they represent a class of passengers and travelers so numerous that it is impracticable to join them all, and those named are made defendants herein for the purpose of determining, as against your orator, the rights of the entire traveling public under the said Passenger Act.

12. The rates fixed by each the said Acts of 1907 and said Passenger Act and as a whole are so unreasonable and confiscatory that a compliance therewith will force an unreasonable reduction and confiscation of your orator's entire revenue contrary to the provisions of the fourteenth amendment to the constitution of the
110 United States and provisions of the constittuion. Besides this, to enforce the rates so fixed in any of said acts would necessarily affect the interstate rates upon the same commodities. Owing to the peculiar geographical location of the state of Missouri, the state rates necessarily affect all interstate rates upon the same commodities and travel and this results as a practical and unavoidable matter in the conduct of business affairs, the location of markets, business houses, the extent of territorial distribution from the various cities in the state and the necessities of travel. In addition to this some of the chief lines of railroad in Missouri, in running to and from points therein, pass out of the state so as to make any transportation between such points interstate commerce. Hence when a state rate between such points when lines wholly within the state is fixed lower than the interstate rate the companies whose transportation is interstate must meet that rate or carry none of the traffic. Such traffic constitutes a very substantial portion of the entire state traffic. Congress has attempted to legislate upon the subject of interstate rates, and since, as a matter of fact, none of said state rates can be enforced without affecting interstate rates, all of the said legislative acts are unconstitutional and void and of no effect and violative of section 8, article 1 of the Constitution of the United States.

In consideration whereof, and forasmuch as your orator is remedi-

less in the premises and by the strict rules of the common law can only have relief in a court of equity where matters of this kind are properly cognizable and relievable, your orator prays that: (1) Each of the said Acts of the Legislature of Missouri of 1907, herein set forth, including said Passenger Act, be declared unconstitutional, unenforcible and not binding upon your orator. (2) all the relief asfled in the original bill as to the Act of 1905 be granted as to the said Acts of 1907. (3) The temporary injunction heretofore issued herein be extended against the defendants to the original and to this bill so as to cover and include any claim or right under
111 or by virtue of any of said freight Acts of 1907 and said Passenger Act and be made permanent. (4) Your orator have such other and further relief as is just and equitable.

And may it please your Honors to grant unto your orator a writ of subpœna of the United States, issuing out of and under the seal of this honorable court, directed to each of the said defendants, including each of those hereby and herein made a party defendant, commanding them and each of them on a day certain therein to be named and under a certain penalty, to be and appear before this honorable court then and there to answer, but not under oath, an answer under oath being expressly waived, all and singular the premises and to stand to, perform and abide by such order, direction and decree as may be made against them in the premises.

And your orator will ever pray, etc.

O. M. SPENCER,
J. G. TRIMBLE,
Solicitors for Complainant.

FRANK HAGERMAN,
Of Counsel.

STATE OF MISSOURI,
County of Jackson, ss:

I, W. G. Brimson, upon oath, say that I am General Manager of complainant in above entitled bill, and as such am familiar with the traffic operations of said company, and all the matters and things mentioned in the said bill which I have read. I know the contents thereof and same are true of my own knowledge, except as to those matters therein stated upon information and belief, and as to those matters, I believe them to be true.

W. G. BRIMSON.

Subscribed and sworn to before me this 12th day of June, 1907.
My commission expires October 5, 1908.
[SEAL.] CORA B. KELSEA,
Notary Public.

Afterwards, on the 25th day of June, 1907, a writ of subpœna was issued.

112 Afterwards, to-wit, on the 15th day of July, 1907, the following order was filed and entered of record:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2999.

QUINCY, OMAHA & KANSAS CITY RAILROAD COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendants.

Order.

This cause coming on for hearing this July 15th, 1907, leave is hereby given to complainant to file an Amendment to Complainant's Bill of Complaint. The application for a temporary injunction against Herbert S. Hadley, Attorney General of the State of Missouri, from prosecuting the suit in the state court which he has instituted against the complainant is continued until the expiration of the ninety days' test heretofore ordered, unless the court should hereafter set the same down for hearing at an earlier date.

(Signed) SMITH McPHERSON, *Judge.*

113 Afterwards, towit, on the 16th day of July A. D. 1907, an amendment to complainant's bill of complainant was filed. Said amendment is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2999.

QUINCY, OMAHA & KANSAS CITY RAILROAD COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendants.

Amendment to Complainant's Bill of Complaint.

The complainant, by leave of court, presents this its amendment to the bills heretofore filed herein, and respectfully shows to the court that it desires to, and does hereby present the matters and things hereinafter set forth, as paragraphs 13, 14, 15, 16, 17, 18, 19, 20 and 21, of the amended and supplemental bill heretofore filed herein, to be inserted therein immediately following paragraph 12 and preceding the prayer thereof. Thereupon complainant avers:

13. It hereby refers to the original and to the amended and sup-

plemental bills herein, with the same force and effect as if copied herein.

14. Conceiving, and the defendants insisting, that an additional amended and supplemental bill should only be filed after notice, and upon order of court, and there being no judge of the court within the district at the time, the complainant filed herein, on June 11th, 1907, its written application for leave to file an amended and supplemental bill, reference to which application is made the same as if copied herein. On the same day, there was served upon
114 counsel for defendants in the original bill, and accepted by them, a written notice, together with a copy of the form of the said amended and supplemental bill, which notice recited that the application to file same, and for a temporary injunction would be presented to the court upon June 14, 1907, at the opening of the court at ten o'clock a. m. Said notice, the acceptance and evidence of service thereof, and form of bill, are upon file and are hereby referred to with the same force and effect as if set out herein. On June 13, 1907, at ten o'clock a. m., there then being a judge of the court within this district, and court being open, complainant presented and asked, pending a hearing of the application to file its amended and supplemental bill the general form of which was then submitted to the court, the right to temporarily file same, and for a restraining order, whereupon the court made an order entered herein upon June 13, 1907, of its own motion in the interests of the public and of all parties, maintaining the status quo pending the hearing, and restraining complainant from putting in force the maximum freight and passenger rates provided by the legislative acts of 1907 mentioned in said bill, and from complying with said acts, reference to said order is now made as fully as if copied herein.

15. Afterwards, on June 14, 1907, Herbert S. Hadley, Attorney General of the State of Missouri, and one of the defendants herein, by his counsel, in flagrant disregard and contempt of the jurisdiction of this court, filed in the circuit court of Jackson County at Kansas City, Missouri, his two petitions in equity in the name of the state at his relation as Attorney General, against this complainant, one asking that the court by mandatory injunction require complainant to put in force the maximum freight rates provided by the said legislative acts of 1907 mentioned in the amended and supplemental bill, and to comply with said acts, and the other as asking the same relief as to the rates fixed by the Passenger Act of 1907. And at his solicitation, the judge of said state court did, in each of said
115 cases, the same day, without notice, issue its restraining order returnable upon the 18th day of June, 1907, requiring the forthwith doing of such acts by this complainant.

Complainant asks leave to produce upon the hearing of this petition, certified copies of said proceedings in the state court, and refer to them as fully as if copied herein.

16. Thereafter at the time fixed in said notice, and upon June 14, 1907, at ten o'clock a. m., there was presented to this court the applications of complainant for leave to file said amended and supplemental bill and for a temporary injunction, and defendants asked

a continuance of the hearing for one day, which the court granted, and upon its own motion ordered that said amended and supplemental bill should be deposited with the clerk (which was then and there done), that in the interest of the public and all parties the status quo should be maintained, and that complainant in the meantime and until the further order of court should be restrained from putting in force the maximum freight and passenger rates fixed by the legislative acts of 1907 mentioned in the said bill, and from complying with said acts. A reference to the said order is now made with the same force and effect as if copied herein. In the meantime the said restraining orders from the state court were served upon complainant. Thereafter, upon June 15, 1907, the said applications were by the counsel for the respective parties and by this court, taken under advisement.

17. Thereafter upon June 17, 1907, this court made and entered an order which, omitting title, is in words and figures as follows:

Order.

"This cause came on for hearing this 17th day of June, 1907, the parties appearing by their counsel in response to notice, and the court being fully advised in the premises, orders and adjudges:

1. Complainant's motion for leave to file an amended and supplemental bill is sustained and such leave is given, the same to be filed as of June 11th, 1907.

Upon such filing process shall be issued so that if the court
116 hereafter decides that the ends of justice require, and the rules of equity permit, the said bill may be treated as an amended, supplemental, ancillary, dependent or original bill.

To said bill, each of the parties named therein shall be and is hereby made a party.

2. Complainant's application for a temporary injunction is, as to the maximum freight laws of 1907, sustained. Until the further order of the court herein, the defendants and each of them are enjoined from doing any act, attempting to recover any penalty, seeking to enforce or having enforced, or asserting any claim or right under or by virtue of either of the maximum freight rate acts of 1907 mentioned in said amended and supplemental bill, to the end that each defendant as to each of said acts of 1907 be restrained as effectually as the defendants were enjoined by the temporary injunction heretofore issued as to and in connection with the act of 1905. By consent of the complainant, the injunction bond heretofore filed shall stand as applicable to this order, the same as if it were executed and filed this day.

3. As to the passenger act of 1907, the order heretofore entered upon the court's own motion shall remain in force until June 19th, 1907, at 6 o'clock a. m., at which time the rates fixed by said act shall be put and kept in force for three months without prejudice to the rights of either party for the purpose of ascertaining more definitely the extent that experience will show that the rates under said act reduce or increase the earnings of complainant.

The court reserves the power, upon the application of any person interested, to hereafter make such further or other order upon this subject as it deems proper.

4. Pending the further hearing and final determination of this case, the complainant shall preserve and keep in existence its way-bills for state freight.

SMITH McPHERSON, *Judge*.

Accordingly said bills were forthwith marked filed as of June 11, 1907, as in and by said order provided. Subpœnas have been duly issued as in and by said order provided, and served upon most of the defendants, and as to the others are in the marshal's hands for service and not yet returned, and complainant is not yet advised as to whether actual personal service has been had.

18. Thereafter upon June 18, 1907, the circuit court of Jackson County, Missouri, upon the application of the said Attorney General entered an order dismissing the case mentioned in paragraph 15 hereof which was filed against this complainant for a mandatory injunction to require it to put in force the maximum freight rates provided by the said legislative acts of 1907, and upon the same day the same court, upon the application of the said Attorney General, entered an order setting aside the restraining order issued in the case mentioned in the same paragraph to require it to put in force the maximum passenger rates fixed by the legislative act of 1907
117 aforesaid, but did not dismiss the case, the Attorney General insisting that it should remain pending. He now threatens to and he will, unless enjoined herein, proceed with the trial and prosecution of the same on and after September 20, 1907, at the expiration of the ninety day test mentioned in the order hereinbefore set out.

19. The said state court has no jurisdiction in the premises and has no right or power to compel complainant by injunction to put in force the maximum passenger rates aforesaid, and any attempt so to do would deny to complainant the protection accorded to it by the fourteenth amendment to the constitution of the United States, which it now claims. Such attempt to oust this court of its jurisdiction, is in contempt thereof, and as to it was and is futile.

20. With the exception hereinafter stated, the facts alleged herein in paragraphs 13 to 18 inclusive, are true as to each of the following railway companies in the state of Missouri; St. Louis & San Francisco; Atchison, Topeka & Santa Fe; St. Louis Southwestern; Chicago, Rock Island & Pacific; St. Louis, Kansas City & Colorado; Kansas City Southern; St. Louis & Hannibal; Missouri Pacific; St. Louis Iron Mountain & Southern; Missouri, Kansas & Texas; Chicago, Burlington & Quincy; Quincy, Omaha & Kansas City; Wabash; St. Joseph & Grand Island; Kansas City, Clinton & Springfield; Chicago Great Western; Chicago, Milwaukee & St. Paul, and Chicago & Alton. Each of said companies had at the same time filed in this court bills similar in nature to the original bill herein to enjoin the enforcement of the Acts of 1905, in which temporary injunctions had been issued and which cases are still pending and undetermined.

Said exception is that the cases in the state court mentioned in paragraph 15 hereof against the St. Louis & San Francisco Railroad Company; St. Louis Southwestern Railway Company; St. Louis, Kansas City & Colorado Railway Company; St. Louis & Hannibal Railway Company; Missouri Pacific Railway Company; St. Louis Iron Mountain & Southern Railway Company; Missouri, Kansas & Texas
118 Railway Company and the Wabash Railroad Company, were filed in the circuit court of St. Louis, Missouri, while those against the other companies were filed in the circuit court of Jackson County, Missouri, at Kansas City. With this exception, similar action to that herein averred was taken in each case pending in this court, and the Attorney General threatens to and unless restrained will, proceed to prosecute each of said cases in the state courts as hereinbefore alleged. As to several of said complainants, the restraining orders from the state courts were served while the parties were presenting said applications upon June 14.

21. The passenger act of 1907, and each freight act of 1907, is void and of no effect for that it is an attempt to deprive complainant of its property without due process of law, and denies to complainant the equal protection of the law for reasons additional to those heretofore given, in that:

(a) Harsh and unreasonable penalties are provided with no provision for a test of the validity of the act, except at the risk of incurring such penalties which, if applied to each shipment of state freight or each passenger traveling on a state journey, over complainant's line, would within two years be greater than the value of complainant's whole property devoted to such use.

(b) It directly influences, affects and bears upon interstate freight and passenger traffic and fixes and regulates the same, for these reasons additional to those heretofore given:

(1) Many of the companies operate lines between the large cities of the state, some of which are wholly within the state and some of which go out of the state into Kansas and then back into this state. For illustration: The Kansas City, Clinton & Springfield Railway Company and the St. Louis & San Francisco Railroad Company are trunk lines between Kansas City, Missouri, and Springfield, Missouri, of substantially the same length; the line of the former be-
119 & 120 tween those points extending into and out of Kansas, so that all its carriage between said points is interstate; the other company has one line which in said course runs into and out of a portion of Kansas, and another separate line between said points which extends wholly through Missouri so that the carriage between said points upon one line is interstate and upon the other, state. Between Joplin and Kansas City there are three trunk lines of substantially the same length, that of the Missouri Pacific Railway Company between said points being wholly within the state and therefore all of its traffic is state, while the lines of the Kansas City Southern Railway Company and the St. Louis & San Francisco Railroad Company between said points extend into and out of Kansas, so that all the traffic between said points is interstate. Between St. Louis, Missouri, and St. Joseph, Missouri, there are two trunk lines, one of

which is that of the Chicago, Burlington & Quincy Railway Company, which does not pass out of the state, so that the traffic between said points upon that line is wholly state, the other line is that of the Missouri Pacific Railway Company which in its course passes into and out of Kansas, so that the entire traffic between said points is interstate. Between Kansas City, Missouri, and St. Joseph, Missouri, there are four trunk lines of substantially equal length, those of the Chicago, Burlington & Quincy Railway Company and the St. Joseph & Grand Island Railway Company are wholly within Missouri and all their traffic between said points is state; the lines of the Missouri Pacific Railway Company and of the Chicago Great Western Railway Company pass into and out of Kansas, so that the entire traffic thereon between said points is wholly interstate.

The said five cities are the largest in the state, their populations, according to the census of 1900 being, St. Louis 575,238; Kansas City, 163,752; St. Joseph, 102,979; Joplin, 26,023; Springfield, 23,267.

The traffic between said cities upon said lines is a very substantial part of the traffic of said lines and of the state;
121 the rates between the points as aforesaid, both for passenger and freight, upon those lines which are interstate, have been for years fixed at a reasonable sum which is much higher than the rates fixed by any of the acts of the legislature in question. If any of the rates mentioned in said acts be put in force between said points upon lines wholly within the state, each of the companies operating the lines which are interstate will necessarily be compelled to lower their rates to the same figure or else, as a matter of fact, none of the traffic between said points will be carried over its line.

(3) The large cities and populous communities of the state are upon its eastern and western borders; the main course of traffic through the state is east and west; all the railroads in the state either operate lines extending into other states, or into the state of Kansas adjoining Missouri upon the west, and Illinois adjoining it upon the east, or else have joint freight and passenger traffic arrangements with lines running into those states for interstate through carriage both of freight and passengers.

So far, pending the test of the passenger rate ordered by this court, it has been demonstrated and is the fact, that the interstate passenger rates are much higher than those fixed by the passenger act of 1907, so that passengers starting from points in Missouri to go to other states buy tickets at two cents a mile to the last station in Missouri upon its border, and then buy tickets or pay fare from thence to their interstate destination, and vice versa from points of interstate trip into Missouri. For illustration a concrete case may be stated. From St. Louis to Kansas City is about 275 miles, thence to Topeka, Kansas, 67 miles, or a total of about 342 miles. The fair and reasonable interstate rate is and has for years been $9.50. A passenger starting from St. Louis may and does, buy his ticket to Kansas City, 275 miles at two cents a mile, or $5.50; he then buys his ticket to Topeka, 67 miles, at three cents a mile or $2.00, making a total from St. Louis

to Topeka of $7.50, thus saving to himself and losing to the
122 carrier the difference between $9.50 and $7.50, or $2.00.

This illustrates the situation upon other lines in the state, so that as a matter of fact it is true that in a state located as the state of Missouri is, the lowering of the rate upon the state traffic below that of the interstate necessarily affects, fixes and lowers the interstate rate in the manner herein stated. The same thing is true of the freight traffic (though not in this respect in as pointed a degree), because the same practice can, is and will be adopted as to freight.

Wherefore, complainant prays, as heretofore prayed, and asks that the defendants be required to also answer this amendment, but an answer under oath is waived, and in addition to the relief heretofore asked, complainant asks that Herbert S. Hadley, Attorney General of the State of Missouri, be temporarily and permanently enjoined from prosecuting the said suit in the state court which he has instituted against the complainant.

And your orator will ever pray, etc.

O. M. SPENCER,
J. G. TRIMBLE,
Solicitors for Complainant.

FRANK HAGERMAN,
Of Counsel.

STATE OF MISSOURI,
County of Jackson, ss:

I, W. G. Brimson upon oath say that I am the General Manager of complainant in the above entitled cause, and as such am familiar with the traffic questions of said company, and all the matters and things mentioned in said amendment which I have read; I know the contents thereof and the same are true of my own knowledge, except as to those stated upon information and belief, and as to those matters, I believe them to be true.

W. G. BRIMSON.

Subscribed and sworn to before me this 3rd day of July, 1907.
My commission expires Oct. 5, 1908.

CORA B. KELSEA,
Notary Public.

123 Afterwards, to-wit, on the 16th day of July, 1907, an Acknowledgment of Service of Subpœna was filed. Said Acknowledgment is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2999.

QUINCY, OMAHA & KANSAS CITY RAILROAD COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendants.

Acknowledgment of Service of Subpœna.

Service of the subpœna issued herein upon June 25, 1907, is acknowledged with the same force and effect and no more than if served by the proper officer.

F. M. RILEY.
R. E. SCEARCE.
H. B. McINTYRE.

124 Afterwards, to-wit, on the 16th day of July, 1907, an Acknowledgment of Service of Subpœna was filed. Said Acknowledgment is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2999.

QUINCY, OMAHA & KANSAS CITY RAILROAD COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendants.

Acknowledgment of Service of Subpœna.

Service of the subpœna issued herein upon June 25, 1907, is acknowledged with the same force and effect and no more than if served by the proper officer.

HERBERT S. HADLEY,
Attorney General,
Solicitor for Railroad Commissioners, Including H. R. Oglesby, Herbert S. Hadley, Attorney General, and Charles M. Daily, William F. Davis and James S. Robb.

125 Afterwards, to-wit, on the 31st day of July, 1907, an Acknowledgment of Service of Subpœna was filed. Said Acknowledgment of Service of subpœna is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2999.

QUINCY, OMAHA & KANSAS CITY RAILROAD COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendants.

Acknowledgment of Service of Subpœna.

Service of the subpœna issued herein upon June 25, 1907, is acknowledged with the same force and effect and no more than if served by the proper officer.

CHARLES W. GERMAN,
County Counselor;
Solicitor for Joseph M. Patterson, Charles E. Moss and George Dodd, County Judges of Jackson Co., Mo., and Arthur C. Warner, County Treasurer, Jackson County, Mo.

126 Afterwards, to-wit, on the 2nd day of August, A. D. 1907, the joint demurrer of John A. Knott, et al., was filed. Said demurrer is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2999.

QUINCY, OMAHA AND KANSAS CITY RAILROAD COMPANY, Complainant
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendants.

The Joint Demurrers of the Above-named Defendants, John A. Knott, Frank Wightman and H. R. Oglesby, Railroad Commissioners of the State of Missouri, to the Amended and Supplemental Bill of Complaint, as Amended.

First. These defendants, by protestation, not confessing or acknowledging all or any of the matters and things in the complainant's amended and supplemental bill of complaint as amended to be true in manner and form as the same are therein and thereby set forth and alleged, doth demur thereto and for cause of demurrer show:

1. That the said complainant has not, in and by said amended and supplemental bill of complaint, as amended, made or stated any such

cause as ought to entitle it to the relief thereby sought and prayed for, from or against these defendants, or to any relief whatsoever.

2. It appears upon the face of complainant's amended and supplemental bill of complaint as amended that the complainant has an adequate remedy at law.

3. The matters and things set forth in complainant's amended and supplemental bill of complaint, as amended, are not nor are any of them germane to or supplementary of the original bill in this case.

127 4. If the matters and things set forth in complainant's amended and supplemental bill of complaint, as amended, entitle the complainant to any relief whatsoever, they constitute a new, original and independent cause of action, not connected with or dependent upon the cause of action set forth in the original bill.

Second. These defendants further demur to the fifth, sixth, seventh and eighth paragraphs of the complainant's amended and supplemental bill of complaint, as amended, because (*a*) the same are not germane to or supplementary of the original bill herein; (*b*) if the matters and things set forth in said paragraphs entitle the complainant to any relief whatsoever, they constitute a new, original and independent cause of action not connected with or dependent upon the cause of action set forth in the original bill; (*c*) the matters and things set forth in said paragraphs do not entitle complainant to the relief prayed for, or to any relief whatsoever.

Third. These defendants further demur to the ninth and tenth paragraphs of the complainant's amended and supplemental bill of complaint, as amended, because (*a*) the matters and things set forth in said paragraphs are not germane to or supplementary of the original bill herein; (*b*) if the matters and things set forth in said paragraphs entitle the complainant to any relief whatsoever, they constitute a new, original and independent cause of action not connected with or dependent upon the cause of action set forth in the original bill; (*c*) the matters and things set forth in said paragraphs do not entitle the complainant to the relief prayed for, or to any relief whatsoever.

Fourth. These defendants further demur to the eleventh and twelfth paragraphs of the complainant's amended and supplemental bill of complaint, as amended, because (*a*) the matters and things set forth in said paragraphs are not germane to or supplementary of the original bill herein; (*b*) if the matters and things set forth in

128 said paragraphs entitle the complainant to any relief whatsoever, they constitute a new, original and independent cause of action, not connected with or dependent upon the cause of action set forth in the original bill; (*c*) the matters and things set forth in said paragraphs do not entitle the complain-t to the relief prayed for, or to any relief whatsoever.

Fifth. These defendants further demur to the fourteenth, fifteenth, sixteenth, seventeenth, eighteenth and nineteenth paragraphs of the complainant's amended and supplemental bill of complaint, as amended, because (*a*) the matters and things set forth in said paragraphs are not germane to or supplementary of the original bill

herein; (*b*) if the matters and things set forth in said paragraphs entitle the complainant to any relief whatsoever, they constitute a new, original and independent cause of action, not connected with or dependent upon the cause of action set forth in the original bill; (*c*) the matters and things set forth in said paragraphs do not entitle the complainant to the relief prayed for or to any relief whatever; (*d*) it appears from said paragraphs that the State Circuit Court of Kansas City, Missouri, has jurisdiction of the suit against the complainant pending therein and mentioned in said paragraphs; (*e*) the State of Missouri had a lawful right to institute said suit in said State court, and said State court had a lawful right to entertain jurisdiction of the same; (*f*) the said Attorney General had a lawful right and the authority to institute the suit referred to in said paragraphs against the complainant, in the State Circuit Court at Kansas City, Missouri, and he has the lawful right and authority to proceed with and prosecute the same to a conclusion; (*g*) if the complainant is aggrieved by the suit against it in the State Circuit Court mentioned in said paragraphs, it has an adequate remedy by making its defense (if any it have) to the same, in said State court.

Sixth. These defendants further demur to the twentieth paragraph of complainant's amended and supplemental bill of complaint, as amended, because (*a*) the matters and things set forth in said
129 paragraph are not germane to or supplementary of the original bill herein; (*b*) if the matters and things
said paragraph entitle the complainant to any relief whatsoever, they constitute a new, original and independent cause of action, not connected with or dependent upon the cause of action set forth in the original bill; (*c*) the matters and things set forth in said paragraph do not entitle the complainant to the relief prayed for or to any relief whatsoever; (*d*) it appears from said paragraph that the Circuit Court of Jackson County, Missouri, and the Circuit Court at St. Louis, Missouri, have jurisdiction, respectively, of the suits against the complainant and other railway companies mentioned in said paragraph; (*e*) the State of Missouri had a lawful right to institute the suits mentioned in said paragraph, and said State courts had a lawful right to entertain jurisdiction of the same; (*f*) the said Attorney General had a lawful right and the authority to institute in said State Circuit Courts the suits against the complainant and the other railway companies mentioned in said twentieth paragraph, and he has the lawful right and authority to proceed with and prosecute the same to a conclusion; (*g*) if the complainant or any of said other railway companies are aggrieved by the suits in said State Circuit Courts mentioned in said twentieth paragraph, they have an adequate remedy by making their defense (if any they have) to the same, in said State courts.

Seventh. These defendants further demur to the twenty-first paragraph of complainant's amended and supplemental bill of complaint, as amended, because (*a*) the matters and things set forth in said paragraph are not germane to or supplementary of the original bill herein; (*b*) if the matters and things set forth in said paragraph entitle the complainant to any relief whatsoever, they constitute a

new, original and independent cause of action, not connected with or dependent upon the cause of action set forth in the original bill; (c) the matters and things set forth in said paragraph do not entitle the complainant to the relief prayed for or to any relief whatever.

Wherefore, and for divers other good causes of demurrer
130 appearing in complainant's amended and supplemental bill of complaint, as amended, and in the paragraphs thereof specifically mentioned in the foregoing demurrers, numbered second, third, fourth, fifth, sixth and seventh, respectively, these defendants demur thereto and humbly demand the judgment of this court whether they shall be compelled to make any further or other answer to said amended and supplemental bill of complaint as amended, or to the said paragraphs hereinbefore specifically mentioned, or any of them, and pray to be hence dismissed with their costs and charges in this behalf most wrongfully sustained.

HERBERT S. HADLEY,
Attorney General;
JOHN KENNISH,
FREDERICK W. LEHMANN,
SANFORD B. LADD,
Solicitors for Defendants.

FREDERICK W. LEHMANN,
SANFORD B. LADD,
Of Counsel.

I hereby certify that the foregoing demurrers are, in my opinion, well founded in point of law.

SANFORD B. LADD,
Of Counsel for Defendants.

The affidavit required by Equity Rule 31 is hereby expressly waived.

FRANK HAGERMAN,
Counsel for Complainant.

131 Afterwards, to wit, on the 2nd day of August, A. D. 1907, the demurrer of Herbert S. Hadley, Attorney General, was filed.

Said demurrer is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2999.

QUINCY, OMAHA AND KANSAS CITY RAILWAY COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendants.

The Demurrers of the Above-named Defendant, Herbert S. Hadley, Attorney General, to the Amended and Supplemental Bill of Complaint as Amended.

First. This defendant, by protestation, not confessing or acknowledging all or any of the matters and things in the complainant's amended and supplemental bill of complaint as amended to be true in manner and form as the same are therein and thereby set forth and alleged, doth demur thereto and for cause of demurrer showeth:

1. That the said complainant has not, in and by said amended and supplemental bill of complaint, as amended, made or stated any such cause as doth or ought to entitle it to the relief thereby sought and prayed for, from or against this defendant, or to any relief whatsoever.

2. It appears upon the face of complainant's amended and supplemental bill of complaint as amended that the complainant has an adequate remedy at law.

3. The matters and things set forth in complainant's amended and supplemental bill of complaint, as amended, are not nor are any of them germane to or supplementary of the original bill in this case.

132 4. If the matters and things set forth in complainant's amended and supplemental bill of complaint, as amended, entitle the complainant to any relief whatsoever, they constitute a new, original and independent cause of action, not connected with or dependent upon the cause of action set forth in the original bill.

Second. This defendant further demurs to the fifth, sixth, seventh and eighth paragraphs of the complainant's amended and supplemental bill of complaint, as amended, because (*a*) the same are not germane to or supplementary of the original bill herein; (*b*) if the matters and things set forth in said paragraphs entitle the complainant to any relief whatsoever, they constitute a new, original and independent cause of action not connected with or dependent upon the cause of action set forth in the original bill; (*c*) the matters and things set forth in said paragraphs do not entitle complainant to the relief prayed for, or to any relief whatsoever.

Third. This defendant further demurs to the ninth and tenth paragraphs of the complainant's amended and supplemental bill of complaint, as amended, because (*a*) the matters and things set forth

in said paragraphs are not germane to or supplementary of the original bill herein; (*b*) if the matters and things set forth in said paragraphs entitle the complainant to any relief whatsoever, they constitute a new, original and independent cause of action not connected with or dependent upon the cause of action set forth in the original bill; (*c*) the matters and things set forth in said paragraphs do not entitle the complainant to the relief prayed for, or to any relief whatsoever.

Fourth. This defendant further demurs to the eleventh and twelfth paragraphs of the complainant's amended and supplemental bill of complaint, as amended, because (*a*) the matters and things set forth in said paragraphs are not germane to or supplementary of the original bill herein; (*b*) if the matters and things set
133 forth in said paragraphs entitle the complainant to any relief whatsoever, they constitute a new, original and independent cause of action, not connected with or dependent upon the cause of action set forth in the original bill; (*c*) the matters and things set forth in said paragraphs do not entitle the complain-t to the relief prayed for, or to any relief whatsoever.

Fifth. This defendant further demurs to the fourteenth, fifteenth, sixteenth, seventeenth, eighteenth and nineteenth paragraphs of the complainant's amended and supplemental bill of complaint, as amended, because (*a*) the matters and things set forth in said paragraphs are not germane to or supplementary of the original bill herein; (*b*) if the matters and things set forth in said paragraphs entitle the complainant to any relief whatsoever, they constitute a new, original and independent cause of action, not connected with or dependent upon the cause of action set forth in the original bill; (*c*) the matters and things set forth in said paragraphs do not entitle the complainant to the relief prayed for or to any relief whatever; (*d*) it appears from said paragraphs that the State Circuit Court of Kansas City, Missouri, has jurisdiction of the suit against the complainant pending therein and mentioned in said paragraphs; (*e*) the State of Missouri had a lawful right to institute said suit in said State court, and said State court had a lawful right to entertain jurisdiction of the same; (*f*) the said Attorney General had a lawful right and the authority to institute the suit referred to in said paragraphs against the complainant, in the State Circuit Court at Kansas City, Missouri, and he has the lawful right and authority to proceed with and prosecute the same to a conclusion; (*g*) if the complainant is aggrieved by the suit against it in the State Circuit Court mentioned in said paragraphs, it has an adequate remedy by making its defense (if any it have) to the same, in said State court.

Sixth. This defendant further demurs to the twentieth paragraph of complainant's amended and supplemental bill of complaint, as amended, because (*a*) the matters and things set forth in
134 said paragraphs are not germane to or supplementary of the original bill herein; (*b*) if the matters and things set forth in said paragraph entitle the complainant to any relief whatsoever, they constitute a new, original and independent cause of action, not connected with or dependent upon the cause of action set forth in

the original bill; (*c*) the matters and things set forth in said paragraph do not entitle the complainant to the relief prayed for or to any relief whatsoever; (*d*) it appears from said paragraph that the Circuit Court of Jackson County, Missouri, and the Circuit Court at St. Louis, Missouri, have jurisdiction, respectively, of the suits against the complainant and other railway companies mentioned in said paragraph; (*e*) the State of Missouri had a lawful right to institute the suits mentioned in said paragraph, and said State courts had a lawful right to entertain jurisdiction of the same; (*f*) the said Attorney General had a lawful right and the authority to institute in said State Circuit Courts the suits against the complainant and the oother railway companies mentioned in said twentieth paragraph, and he has the lawful right and authority to proceed with and prosecute the same to a conclusion; (*g*) if the complainant or any of said other railway companies are aggrieved by the suits in said State Circuit Courts mentioned in said twentieth paragraph, they have an adequate remedy by making their defense (if any they have) to the same, in said State courts.

Seventh. This defendant further demurs to the twenty-first paragraph of complainant's amended and supplemental bill of complaint, as amended, because (*a*) the matters and things set forth in said paragraph are not germane to or supplementary of the original bill herein; (*b*) if the matters and things set forth in said paragraph entitle the complainant to any relief whatsoever, they constitute a new, original and independent cause of action, not connected with or dependent upon the cause of action set forth in the original bill; (*c*) the matters and things set forth in said paragraph do not entitle the complainant to the relief prayed for or to any relief whatever.

Wherefore, and for divers other good causes of demurrer
135 appearing in complainant's amended and supplemental bill of complaint, as amended, and in the paragraphs thereof specifically mentioned in the foregoing demurrers, numbered second, third, fourth, fifth, sixth and seventh, respectively, this defendant demurs thereto and humbly demands the judgment of this court whether he shall be compelled to make any further or other answer to said amended and supplemental bill of complaint as amended, or to the said paragraphs hereinbefore specifically mentioned, or any of them, and prays to be hence dismissed with his costs and charges in this behalf most wrongfully sustained.

HERBERT S. HADLEY,
Attorney General;
JOHN KENNISH,
FREDERICK W. LEHMANN,
SANFORD B. LADD,
Solicitors for Defendant.

FREDERICK W. LEHMANN,
SANFORD B. LADD,
Of Counsel.

I hereby certify that the foregoing demurrers are, in my opinion, well founded in point of law.

SANFORD B. LADD,
Of Counsel for Defendant.

The affidavit required by Equity Rule 31 is hereby expressly waived.

FRANK HAGERMAN,
Counsel for Complainant.

136 Afterwards, towit, on the 2nd day of August, A. D. 1907 the joint and several demurrer of J. M. Patterson, et al., was filed.

Said demurrer is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2999.

QUINCY, OMAHA AND KANSAS CITY RAILWAY COMPANY,
Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendants.

The Joint and Several Demurrer of Joseph M. Patterson, Charles E. Moss, and George Dodd, Judges of the County Court of Jackson County, Missouri, and Arthur C. Warner, Treasurer of said County, Four of the Defendants Herein, to Complainant's Original Bill of Complaint, its Amended and Supplemental Bill, and the Amendment to said Bill of Complaint.

These defendants, by protestation, not confessing all or any of the matters and things in complainant's original bill of complaint, its amended and supplemental bill, and the amendment to said bill of complaint to be true in such manner and form as the same are therein set forth and alleged, demur thereto, and for cause of demurrer show that the said complainant has not in and by said original bill of complaint, its amended and supplemental bill, and the amendment to said bill of complaint, made or stated any such cause as doth or ought to entitle it to the relief thereby sought and prayed for from or against these defendants or either of them.

137 Wherefore, and for divers other good causes of demurrer appearing in said original bill of complaint, the said amended and supplemental bill, and the said amendment to the bill of complaint, these defendants respectively demur thereto and humbly demand the judgment of this court whether they shall be compelled to make any further or other answer to the said original bill of complaint, the said amended and supplemental bill, and the amendment

to the bill of complaint, and pray to be hence dismissed with their costs and charges in this behalf most wrongfully sustained.

HERBERT S. HADLEY,
Attorney General;
JOHN KENNISH,
FREDERICK W. LEHMANN,
SANFORD B. LADD,
Solicitors for Defendants.

FREDERICK W. LEHMANN,
SANFORD B. LADD,
Of Counsel.

I hereby certify that in my opinion the foregoing demurrer is well founded in point of law.

SANFORD B. LADD,
Of Counsel for Defendants.

The affidavit required by Equity Rule 31 is hereby expressly waived.

FRANK HAGERMAN,
Counsel for Complainant.

138 Afterwards, towit, on the 2nd day of August, A. D. 1907, the joint and several demurrer of F. M. Riley et al. was filed. Said demurrer is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2999.

QUINCY, OMAHA AND KANSAS CITY RAILWAY COMPANY,
Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendants.

The Joint and Several Demurrer of F. M. Riley, R. E. Scearce, and H. P. McIntyre, Three of the Defendants Herein, to Complainant's Original Bill of Complaint, its Amended and Supplemental Bill, and the Amendment to said Bill of Complaint.

These defendants, by protestation, not confessing all or any of the matters and things in complainant's original bill of complaint, its amended and supplemental bill, and the amendment to said bill of complaint to be true in such manner and form as the same are therein set forth and alleged, demur thereto, and for cause of demurrer show that the said complainant has not in any by said original bill of complaint, its amended and supplemental bill, and the amendment to said bill of complaint, made or stated any such cause

as doth or ought to entitle it to the relief thereby sought and prayed for from or against these defendants or either of them.

138½ Wherefore, and for divers other good causes of demurrer appearing in said original bill of complaint, the said amended and supplemental bill, and the said amendment to the bill of complaint, these defendants respectively demur thereto and humbly demand the judgment of this court whether they shall be compelled to make any further or other answer to the said original bill of complaint, the said amended and supplemental bill, and the amendment to the bill of complaint, and pray to be hence dismissed with their costs and charges in this behalf most wrongfully sustained.

HERBERT S. HADLEY,
Attorney General;
JOHN KENNISH,
FREDERICK W. LEHMANN,
SANFORD B. LADD,
Solicitors for Defendants.

FREDERICK W. LEHMANN,
SANFORD B. LADD,
Of Counsel.

I hereby certify that in my opinion the foregoing demurrer is well founded in point of law.

SANFORD B. LADD,
Of Counsel for Defendants.

The affidavit required by Equity Rule 31 is hereby expressly waived.

FRANK HAGERMAN,
Counsel for Complainant.

139 Afterwards, to wit, on the 2nd day of August, A. D. 1907, the joint and several demurrer of Charles M. Daily et al was filed.

Said demurrer is in words & figures as follows.

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2999.

QUINCY, OMAHA AND KANSAS CITY RAILWAY COMPANY,
Complainant,
vs.
HERBERT S HADLEY, Attorney General of the State of Missouri, et al., Defendants.

The Joint and Several Demurrer of Charles M. Daily, W. F. Davis, and James Robb, Three of the Defendants Herein, to Complainant's Amended and Supplemental Bill of Complaint as Amended.

These defendants, by protestation, not confessing or acknowledging all or any of the matters and things in the complainant's

amended and supplemental bill of complaint, as amended, to be true in manner and form as the same are therein and thereby set forth and alleged, do demur thereto and for cause of demurrer show:

First. That the said complainant has not, in and by said amended and supplemental bill of complaint, as amended, made or stated any such cause as ought to entitle it to the relief thereby sought and prayed for from or against these defendants, or to any relief whatsoever.

Second. If the matters and things set forth in complainant's amended and supplemental bill of complaint, as amended, entitle the complainant to any relief whatsoever, they constitute a new, original and independent cause of action, not connected with or dependent upon the cause of action set forth in the original bill.

140 Wherefore, and for divers other good causes of demurrer appearing in complainant's amended and supplemental bill of complaint, as amended, these defendants demur thereto and humbly demand the judgment of this court whether they shall be compelled to make any further or other answer to said amended and supplemental bill of complaint, as amended, and pray to be hence dismissed with their costs and charges in this behalf most wrongfully sustained.

HERBERT S. HADLEY,
Att'y Gen.;
JOHN KENNISH,
FREDERICK W. LEHMANN,
SANFORD B. LADD,
Solicitors for Defendants.

FREDERICK W. LEHMANN,
SANFORD B. LADD,
Of Counsel.

I hereby certify that the foregoing demurrer is, in my opinion, well founded in point of law.

SANFORD B. LADD,
Of Counsel for Defendants.

The affidavit required by Equity Rule 31 is hereby expressly waived.

FRANK HAGERMAN,
Counsel for Complainant.

141 Afterwards, to-wit, on the 24th day of September, 1907, an Interlocutory Report of Special Master was filed.

And afterwards, to-wit, on the 7th day of October, 1907, said Interlocutory Report of Special Master and the Order thereon, was refiled.

Said Interlocutory Report and the Order thereon *is* in words and figures as follows:

Circuit Court of the United States, Western Division of the Western District of Missouri.

MISSOURI PACIFIC RAILWAY COMPANY
vs.
HERBERT S. HADLEY, Attorney General, et al.

CHICAGO, BURLINGTON & QUINCY RAILWAY CO.
vs.
HERBERT S. HADLEY, Attorney General, et al.

WABASH RAILROAD COMPANY
vs.
HERBERT S. HADLEY, Attorney General, et al.

Interlocutory Report of Special Master.

To the Honorable the Judges of said Court:

By reason of the premises hereinafter recited the undersigned Special Master to whom the above entitled and fifteen other like causes were referred by order of this Court bearing date March 5th, 1906, begs leave to present this special interlocutory report.

Having completed the taking of the evidence offered by the respective parties complainants and defendants in the three cases above named, these having been duly selected out of the eighteen for hearing in the first instance in pursuance of the order of reference, the same were set down for argument before the Master on June 18th, 1907. On said date, however, the complainants in all the cases, having immediately prior thereto filed their amended and supplemental bills in this Court, further proceedings before the Master were, by consent of all parties, suspended subject to
142 be resumed on due notice.

As appears in said amended and supplemental bills and the several amendments thereof since filed, copies of all whereof have been duly received by the Master, there have been brought into these cases various new and additional matters not embraced in the issues so referred.

And being in doubt as to whether the filing of such amended and supplemental bills do of necessity or should, pending proceedings in Court thereon, operate as a stay of further proceedings before him and of his report upon the matters and issues so referred, the Special Master therefore submits this Interlocutory Report and respectfully prays for such further orders and directions in the premises as to the Court may seem meet.

F. L. SCHOFIELD,
Special Master.

The amendments pending the hearing of the original bills of complaint had the effect, in law, of uniting the matters complained

of in one bill. They, therefore, constitute but one bill of complaint, and all matters involved should be fully heard and the Master's findings should be embraced in a single report.

(Signed) JNO. F. PHILIPS, *Judge*.

October 7th, 1907.

143 Afterwards, to-wit, on the 13th day of November, 1907, the following order was filed and entered of record, to-wit:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD CO., Complainant,
vs.
HERBERT S HADLEY, Attorney General of the State of Missouri, et al., Defendants.

Also

In Equity.

RAILROAD COMPANIES
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2998, 2999, 3000, 3001, 3002, 3003, 3004, and 3006.

Order.

This cause coming on for hearing this November 13, 1907, it is by consent of parties ordered that leave of court be and is hereby granted to amend complainant's "Amendment to complain-t's bill of complaint," by erasing and striking out of paragraph 15 thereof the words "between 12 and 1 o'clock A. M." in lines 27 and 28 on page 2, and the words "at the said hours of" in lines 1 and 2 on page 3, and complainant's counsel are directed to forthwith make such erasure.

(Signed) SMITH McPHERSON, *Judge*.

144 Afterwards, to-wit, on the 10th day of April, 1908, the following order was filed and entered of record, to-wit:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. —

QUINCY, OMAHA & KANSAS CITY RAILROAD COMPANY, Complainant,

vs.

HERBERT S. HADLEY, Attorney General, et al., Defendants.

Order.

This cause came on for hearing this 10th day of April, 1908, upon the demurrers herein filed. The parties appeared by their respective counsel, and the court, after argument, being fully advised in the premises, overrules said demurrers.

(Signed) SMITH McPHERSON, *Judge.*

145 Afterwards, to wit, on the 12th day of May, 1908, the joint answer of John A. Knott et al., was filed.

Said answer is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2999.

QUINCY, OMAHA & KANSAS CITY RAILROAD COMPANY, Complainant,

vs.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendants.

The Joint Answer of the Defendants, John A. Knott, Frank Wightman and H. R. Oglesby, Railroad Commissioners of the State of Missouri, to the Complainant's Amended and Supplemental Bill and the Amendment Thereto.

These defendants now, and at all times hereafter, saving to themselves all and all manner of benefit or advantage of exception, or otherwise, that can or may be had or taken to the many errors and imperfections in said Amended and Supplemental Bill of complaint, as amended, for answer thereto, or to so much thereof as they are advised is material or necessary to make answer to, answering say:

That they do hereby adopt as their Answer herein the answer of Herbert S. Hadley, Attorney-General of the State of Missouri, and all and singular the statements and averments thereof as fully as if

the same were repeated herein, and they ask that the said Answer be taken in all respects as the Answer of them and of each of them.

These defendants deny that the complainant is entitled to any relief whatever against these defendants, without this, that
146 any other matter, cause or thing in the complainant's amended and supplemental bill and the amendments thereto, contained, material or necessary for these defendants to make answer unto, and not herein or hereby well and sufficiently answered, confessed, traversed and avoided or denied, is true to the knowledge or belief of these defendants, or any of them; to each of which matters and things these defendants are ready and willing to aver, maintain and prove, as this Honorable Court shall direct, and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

HERBERT S. HADLEY,
Attorney-General;
JOHN KENNISH,
Ass't Attorney-General,
Solicitors for Defendants.

SANFORD B. LADD,
F. W. LEHMANN,
Of Counsel.

Received copy of the above and foregoing Answer May 4, 1908.

J. G. TRIMBLE,
FRANK HAGERMAN,
Solicitors for Complainant.

147 Afterwards, to-wit, on the 12th day of May, A. D. 1908, the answer of Herbert S. Hadley, Attorney General, was filed. Said answer is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2999.

QUINCY, OMAHA & KANSAS CITY RAILROAD COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendants.

Answer of Herbert S. Hadley, Attorney-General of the State of Missouri, to the Complainant's Amended and Supplemental Bill and the Amendment Thereto.

This defendant now, and at all times hereafter, saving to himself all and all manner of benefit, or advantage of exception, or otherwise, that can or may be had or taken to the many errors and imperfections in said Amended and Supplemental Bill of complaint, as

amended, for answer thereto, or to so much thereof as he is advised is material or necessary to make answer to, answering says:

This defendant admits Paragraphs 1, 2, 3 and 4 of the Amended and Supplemental Bill.

This defendant denies that the Governor of the State, in giving his written reasons for approving the Act of 1905, referred to or indicated that it was with some reluctance that he signed the same.

And this defendant denies that any acknowledgment was made of the invalidity of the Act of 1905, referred to in Paragraphs 5 and 6 of the Amended and Supplemental Bill; but he admits that the Legislature of the State of Missouri did pass an act, effective June 14, 1907, in words and figures as set forth in Paragraph 6 of said Amended and Supplemental Bill.

But this defendant denies that it was the purpose or the intention of the defendant herein to attempt to enforce all penalties which may accrue if the said acts are held to be illegal.

This defendant admits that the Legislature of Missouri in 1907 passed the two acts set forth in Paragraph 7 of said Amended and Supplemental Bill.

And this defendant denies that if the complainants should charge the maximum rates prescribed by the acts of the General Assembly of the State of Missouri enacted at its session in 1907, the total gross receipts of the complainant from State traffic would be re-
148 duced in a very large sum, and denies that the said freight acts, or any of them, are violative of the provisions of the Constitution to the same extent as complainant has alleged with respect to the Act of 1905, or to any extent whatever.

And this defendant denies that the rates fixed by the Acts of 1907 are unreasonable and confiscatory, and less than the cost of the service.

And this defendant denies that the Governor of the State of Missouri in calling for the passage of said Act of 1907, and the Legislature in passing the same, did so for the avowed purpose of increasing certain of the maximum rates of the Act of 1905, which they conceived had in this litigation been proved to be unreasonable and confiscatory, and could not be enforced.

And this defendant denies that the rates as finally fixed by the Acts of 1907 were not on such a basis as would return a reasonable and fair compensation to the complainant upon the value of that portion of its property devoted to such use.

And this defendant denies that if the laws in existence in 1905, relative to passenger fares, had remained in force, the freight rates, as fixed by said Acts of 1907, would be unreasonable or confiscatory, or that they would not give a just return upon the value of that portion of complainant's property devoted to said traffic.

This defendant denies that the Legislature of the State acted without any fixed or definite knowledge upon the subject of rates, or that they erroneously conceived that if the increase in freight rates were necessary and were made, there could be a general equalization of rates by a decrease in the passenger rates, and that thereby, in substance, they could legally overcome and offset any advantage from an

increase in freight rates by decreasing the maximum rates to be charged for said passenger traffic about 33⅓ per cent, and thus while defeating pending litigation, the public, as a whole, would not be the loser.

This defendant denies that the result was that as part and parcel of one transaction and substantially as one law, and to accomplish the purposes alleged in the Amended and Supplemental Bill, there was passed, and the Governor approved, an act called the "Passenger Act," taking effect on June 14, 1907; but this defendant admits that the act relative to passenger rates, in words and figures as set forth in said Paragraph 9 of the Amended and Supplemental Bill, was enacted by the Legislature of the State of Missouri.

And this defendant denies that the said act regulating passenger rates is violative of any provision of the Constitution of the State of Missouri, or of the United States, and denies that it is subject to any of the objections made in the original bill to the Act of 1905, and denies that any of the facts alleged in the original bill as to why the Act of 1905 should be held to be void and action thereunder restrained, are true as to the Acts of 1907, or of the said passenger act.

This defendant denies that the said Passenger Act will reduce the earnings of the complainant from its passenger business in the practical and ordinary operation of the road, or otherwise, substantially one-third, or in any amount whatsoever.

The defendant has no knowledge or information or belief as to the aggregate amount of the State passenger earnings for the year 1906, and he denies that if the passenger act aforesaid had been applied thereto, State earnings would have been reduced in any sum whatever.

149 And this defendant denies that the value of that portion of complainant's property devoted to the carriage of State business, considered as a whole, or separately, as to the passenger business only, is such in any case that the reduction in rates by said Passenger Act would fail to make a reasonable return on such valuation, and denies that it would cause such business to be done at an actual loss.

This defendant denies that the said Passenger Act was passed for the avowed purpose of reducing the State passenger rates of complainant so as to off-set and overcome the supposed increase of freight rates made under the Act of 1907, and denies that the attempt was made to frame each act so as to avoid the injunctive relief in this or in each action heretofore instituted by railroad companies operating lines in Missouri.

And this defendant denies that if the injunction be not granted herein, the complainant is without means of adequate and proper relief, or would be denied due process of law. And this defendant alleges the fact to be that in the suit instituted by the State of Missouri to require by mandamus or mandatory injunction the observance of the laws of the said State, every defense, which the complainant herein and defendant in said suit may have, could be presented and considered, and the State of Missouri is contemplating no suit of any kind which would in any manner embarrass the complainant in the assertion of any rights which it may have.

This defendant says that it is not true that the special duties devolving upon the members of the Board of Railroad Commissioners and the Attorney-General, as stated in the original bill, apply to the Acts of 1907, and the Passenger Act aforesaid.

And this defendant denies that it is necessary or proper that the county judges and county treasurers of the State of Missouri should be made parties to this litigation, or that any private person should be drawn in as defendant thereto.

This defendant denies that the rates fixed by each, or any of the said Acts of 1907, or by said Passenger Act, or that the rates fixed by all of said acts, as a whole, are unreasonable or confiscatory, or that they will force an unreasonable reduction or confiscation of complainant's entire revenue, or of any part thereof, or that the said acts, or any of them, are in violation of the provisions of the Fourteenth Article of Amendment of the Constitution of the United States, or of any other provision of said Constitution.

And this defendant denies that to enforce the rates fixed by any of said acts would necessarily affect the interstate rates upon the same commodities. And this defendant alleges the fact to be that for many years past the complainant has voluntarily carried passengers in the State of Missouri, whose travel was wholly within the State, at the rate of two cents per mile. It has also carried many persons, other than employés of their own or other railroad companies, without exacting any compensation whatsoever, and the great bulk of passenger transportation within the State has been for many years past conducted at approximately two cents per mile, and that the charge of three cents exacted by complainant of any persons was an unjust, excessive and discriminatory charge upon such persons.

Referring to Subdivision (*b*) of Paragraph 11 of complainant's Amended and Supplemental Bill, this defendant says that the real purpose of the original Bill herein was to determine whether that portion of the property of complainant devoted to State
150 freight business, could, if the Act of 1905 were enforced, receive such return upon its value as would be fair, reasonable and not confiscatory, and that upon the trial of the three cases heard by the Special Master such was the theory adopted by both parties, and the proofs were by both of them directed to that end. And this defendant avers that the only legitimate and proper inquiry in this suit is as to the questions of law and fact arising upon the issues made by the original Bill and the Answer thereto, as to the validity of the said Act of 1905, and the results of its operation, and whether the same, if enforced, would be confiscatory and unremunerative to the complainant. Defendant asserts that the purpose of the original Bill ought not to be, and cannot, without disregard of the established rule of procedure of the Court of Chancery, be changed and perverted, to the end that the effect of the freight rate Act, or the passenger rate Act of 1907, shall be considered in this litigation, and that the only question proper to be considered or determined by this court in this action is the consequences to the complainant of the enforcement of the said Act of 1905.

This defendant denies that on the 11th day of June, 1907, the

complainant filed herein a written application for leave to file an Amended and Supplemental Bill, and he denies that upon the same day there was served upon the counsel for the defendants in the original Bill herein, and accepted by them, a written notice that a copy of the form of the said Amended and Supplemental Bill, reciting that application to file same and for a temporary injunction would be presented to this Court upon June 14, 1907, at the opening of said court at 10 a. m.

And he denies that two petitions in equity in the name and on behalf of the State of Missouri, referred to in Paragraph 15 of the said Amended and Supplemental Bill, as amended, were filed by him in disregard or in contempt of the jurisdiction of this Court; and he alleges the fact in that regard to be that on the thirteenth day of June, A. D. 1907, he did, in the name and on behalf of the State of Missouri, by virtue of his office and authority as Attorney-General of the said State, file two petitions of the State of Missouri, the same being petitions in equity against the complainant herein, as defendant in the said suits, the one asking that the said complainant herein, defendant in the said suit, be required to comply with the maximum freight rates provided by the laws of the State of Missouri, enacted at the legislative session of the year 1907, and the other asking that the said complainant herein, defendant in the said suit, be required to comply with the passenger rates fixed by the laws of the State of Missouri, enacted at the legislative session of the year 1907, and the said petitions were filed in the Circuit Court of the State of Missouri in and for the City of St. Louis, the same being a court of the State of Missouri of competent and general jurisdiction, and the said petitions were filed, and the suits instituted thereby, were pending, and summons, according to the laws of the State of Missouri, issued upon the said petitions and served upon the complainant herein, defendant therein, before the hour of 10 o'clock a. m. of said 14th day of June, 1907, and before any Amended or Supplemental Bill, or any amendment to the original Bill herein was filed by the complainant, or before any such amended or Supplemental Bill, or amendment to the original Bill was presented to this Court for consideration.

And this defendant alleges further that the said petition in equity so as aforesaid filed by him in the Circuit Court of the City of St. Louis, relative to the freight rates, has been dismissed by
151 him, and is no longer pending, but that the said petition in equity, so as aforesaid filed by him in the Circuit Court of the City of St. Louis, relative to the passenger rates, is still pending and undetermined.

And this defendant admits that the said Circuit Court of the City of St. Louis did on the said 13th day of June, A. D. 1907, issue its restraining order, returnable upon the — day of June, 1907, in the said suit in equity relative to the said passenger rates, requiring the complainant herein, and defendant therein, to comply with the law of the State of Missouri in that behalf.

This defendant admits that upon the 14th day of June, 1907, at 10 a. m., there were presented to this Court the application of complainant for leave to file its Amended and Supplemental Bill, and

for a temporary injunction, and that a continuance of the hearing of said application for one day was granted by the said court, and that this Court, upon its own motion, made the orders stated and referred to in Paragraph 16 of the said Amended and Supplemental Bill, as amended.

This defendant admits that upon June 17, 1907, this Court made and entered the order set forth in Paragraph 17 of the said Amended and Supplemental Bill, as amended.

And this defendant further admits that subpœnas have been issued, as by said order provided, and served upon this defendant.

This defendant admits that upon June —, 1907, the said Circuit Court of the City of St. Louis, upon the application of this defendant, entered an order dismissing the petition in equity of the State of Missouri theretofore filed by him relative to the freight rates prescribed by the laws of the State of Missouri, and that upon the same day, upon his application, the said court entered an order setting aside the restraining order previously issued by it in the suit in equity of the State of Missouri against this complainant, as defendant therein, relative to the passenger rates prescribed by the laws of the State of Missouri.

And this defendant avers that he made his application to set aside the said restraining order because this complainant had put into effect the passenger rates prescribed by the laws of the State of Missouri and was fully observing the same, and has continued so to do to the present time.

This defendant admits that he did not dismiss the said suit in equity, relative to the passenger rates, and has insisted that it should remain pending, and that it is his purpose to proceed therewith, if the complainant herein, defendant in the said suit, shall, at any time hereafter, cease to comply with the laws of the State of Missouri relative to passenger rates in said State.

And this defendant denies that the said State court has no jurisdiction in the premises, or that it has no right or power to compel complainant herein and defendant in the said suit, to put in force the passenger rates referred to, and he denies that any action by the said court would deny to complainant the protection accorded to it by the Fourteenth Amendment to the Constitution of the United States, and he alleges the fact in that regard to be that the said Circuit Court of the City of St. Louis is a court of competent and gengeneral jurisdiction, having jurisdiction alike of the person of the complainant herein, defendant in the suit pending in the said Circiut Court of the City of St. Louis, and that due process of law can and will be had by the complainant herein, defendant in the said suit, in the said suit, and any defense that it may have to the said suit in equity, so as aforesaid brought by the State of Mis-
152 souri in said Circuit Court of the City of St. Louis, can and will be fully and fairly heard by said Circuit Court of the City of St. Louis, and any rights which the complainant herein, defendant in the said suit, in said State court may have, will be fully conserved and protected.

This defendant denies that the facts alleged in Paragraphs 13 to 18, inclusive, of the Amended and Supplemental Bill, as amended,

are true as to each or any of the several railroad companies named in Paragraph 20 of the said Amended and Supplemental Bill, as amended, except as they correspond with the admissions and averments hereinbefore set forth in this Answer.

This defendant admits that each of said companies had filed original bills in this Court similar to the original bill filed by the complainant herein.

This defendant also admits that the suits in equity brought by the State of Missouri were brought against the several railroad companies named in said Paragraph 20 either in the Circuit Court of Jackson county, or in the Circuit Court of the City of St. Louis, as in said paragraph stated.

And this defendant admits that it is his purpose to prosecute the said suits in equity, so brought by the State of Missouri in its said courts, in relation to the passenger rates, in the event that the said companies, defendants in said suits, shall fail to continue in observance of the passenger rates prescribed by the laws of the State of Missouri.

And this defendant denies that as to any of the complainants in the suits pending in the Circuit Court of the United States, defendants to the suits brought by the State of Missouri, restraining orders from the said State courts were served in the court room of this Court while the said parties, or any of them, were presenting applications to this Court upon June 14, 1907, but, on the contrary, this defendant alleges the fact to be in that regard that the said restraining orders were all served upon the proper officers of the said companies at their respective offices.

And this defendant denies that the said passenger Act of 1907, and that each or any of the freight acts of the State of Missouri of 1907, is void and of no effect, for the reason that it is an attempt to deprive complainant of its property without due process of law, or denies the complainant the equal protection of the law, and he alleges the fact in that regard to be that the said passenger act of 1907 is a reasonable and proper regulation of passenger rates in the State of Missouri, and that each of said freight acts of 1907 is a reasonable and proper regulation of rates for the transportation of freight; and that the said rates so prescribed by the said several acts of the General Assembly of the State of Missouri, and each of them, prescribe fair, proper and remunerative rates for the service to which the said acts severally relate.

And this defendant denies that the penalties provided by the said acts for a violation of them are harsh and unreasonable, or that they could in anywise be made burdensome, except through a persistent and continued disregard of the law by the said complainant.

This defendant denies that the said acts, or any of them, influence, affect or bear upon interstate freight and passenger traffic, or that they, or any of them, fix and regulate interstate freight and passenger traffic.

As to whether the Kansas City, Clinton & Springfield Railway Company, and the St. Louis & San Francisco Railroad Company, between Kansas City and Springfield, are of substantially the same

length, or as to whether the line of the former between those
153 points extending into and out of Kansas, or whether all its carriage between said points is interstate, or whether the other company has one line which in its course runs into and out of a portion of Kansas, and another separate line between said points which extends wholly through Missouri, or whether the carriage between said points upon one line is interstate and upon the other state; or whether between Joplin and Kansas City there are three trunk lines of substantially the same length, some of which are within the State, and some of which are without the State, or whether all of the traffic on some of said lines between Joplin and Kansas City is State, and on other of said lines, between said points, is interstate; or whether between St. Louis and St. Joseph, Missouri, the line of the Chicago, Burlington & Quincy Railroad Company does not pass out of the State, or whether the traffic on said road between said points on said line is wholly State; or whether the line of the Missouri Pacific Railway Company between said St. Louis and St. Joseph in its course passes into and out of the state of Kansas, or whether the entire traffic upon said railway between said points is interstate; or whether between Kansas City and St. Joseph, Missouri, there are four trunk lines of substantially equal length, some of which are wholly within Missouri, and upon some of which all their traffic between said points is State, or whether the lines of some of them pass into and out of Kansas, or the entire traffic upon them, between said points, is wholly interstate, this defendant has no knowledge, information or belief.

This defendant admits that some of the large and populous communities of the State are upon its eastern and western borders. He admits that the main course of part of the traffic through the State is east and west. He has no knowledge, information or belief as to whether any of the railroads in the State either operate lines extending into other states, or into the state of Kansas or Illinois, or whether any of them have joint freight and passenger traffic arrangements with lines running into those states, or interstate carriage for freight and passengers.

As to whether the interstate passenger rates are higher than those fixed by the passenger act of 1907, or whether passengers starting from points in Missouri to go to other states buy tickets at two cents a mile to the last station in Missouri upon its border, and then buy tickets or pay fare from thence to their interstate destination, and vice versa, this defendant has no knowledge, information or belief.

As to what the interstate rate from St. Louis to Topeka, Kansas, is, or has been, this defendant has no knowledge, information or belief; os as to whether a passenger starting from St. Louis for Topeka buys his tickets in the manner stated in the Amended and Supplemental Bill, as amended.

He denies that the lowering of the State rate for the transportation of passengers necessarily affects, fixes or lowers the interstate passenger rate, and he denies that the same is true of the freight traffic.

This defendant denies that the complainant is entitled to any relief whatever against this defendant, without this, that any other matter,

cause or thing in the complainant's Amended and Supplemental Bill and the amendments thereto, contained, material or necessary for this defendant to make answer unto, and not herein or hereby well and sufficiently answered, confessed, traversed and avoided or denied, is true to the knowledge or belief of this defendant; all which matters and things this defendant is ready and willing to aver, main-
154 tain and prove, as this Honorable Court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

HERBERT S. HADLEY,
Attorney General;
JOHN KENNISH,
Assistant Attorney General,
Solicitors for Defendant.

SANFORD B. LADD,
F. W. LEHMANN,
Of Counsel.

Received copy of the above and foregoing Answer May 4, 1908.
J. G. TRIMBLE,
FRANK HAGERMAN,
Solicitors for Complainant.

155 Afterwards, to wit, on the 1st day of June, A. D. 1908, the replication of complainant to the answer of John A. Knott et al. was filed.

Said replication is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2999.

QUINCY, OMAHA & KANSAS CITY RAILROAD COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendants.

Replication of Complainant to the Joint Answer of John A. Knott, Frank Wightman and H. R. Oglesby, Railroad Commissioners of the State of Missouri, to the Complainant's Amended and Supplemental Bill and the Amendment Thereto.

This replicant saving and reserving to itself all and all manner of advantage of exception which may be had or taken to the manifold errors, uncertainties and insufficiencies of the answer of the said defendants for replication thereunto, saith: That it does and will aver, maintain and prove its said bill to be true, certain and sufficient in the law to be answered unto by the said defendants, and that the answer of the said defendants, is very uncertain, evasive and insuffi-

cient in law to be replied unto by this replicant; without that, that any other matter or thing in the said answer contained, material or effectual in law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this replicant is ready to aver, maintain and prove as this honorable court shall direct, and humbly prays as in and by its said bill it hath already prayed.

J. G. TRIMBLE,
O. M. SPENCER,
Solicitors for Complainant.

E. M. SHELTON,
FRANK HAGERMAN,
Of Counsel.

156 Afterwards, to wit, on the 1st day of June A. D. 1908, the replication of complainant to the answer of Herbert S. Hadley, et al. was filed.

Said replication is in words and figures as follows:—

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2999.

QUINCY, OMAHA & KANSAS CITY RAILROAD COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendants.

Replication of Complainant to the Answer of Herbert S. Hadley, Attorney General of the State of Missouri, to the Complainant's Amended and Supplemental Bill and the Amendment Thereto.

This replicant saving and reserving to itself all and all manner of advantage of exception which may be had or taken to the manifold errors, uncertainties and insufficiencies of the answer of the said defendant for replication thereunto, saith: That it does and will aver, maintain and prove its said bill to be true, certain and sufficient in the law to be answered unto by the said defendant, and that the answer of the said defendant, is very uncertain, evasive and insufficient in law to be replied unto by this replicant; without that, that any other matter or thing in the said answer contained, material or effectual in law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this replicant is ready to aver, maintain and prove as this honorable court shall direct, and humbly prays as in and by its said bill it hath already prayed.

J. G. TRIMBLE,
O. M. SPENCER,
Solicitors for Complainant.

E. M. SHELTON,
FRANK HAGERMAN,
Of Counsel.

157 Afterwards, to-wit, on the 13th day of June, 1908, the following order was filed and entered of record, to-wit:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General, et al., Defendants.

And also

In Equity.

RAILROAD COMPANIES
vs.
HERBERT S. HADLEY, Attorney General, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004, and 3006.

Orders.

Causes numbered 2988, 2989, 2990, 2991, 2995, 2997, 3001, 3002, 3003, and 3006 came on for hearing this June 13, 1908, upon the application of complainants to at once set down for hearing their applications for temporary injunctions. The parties appeared by counsel, the defendants insisting that such hearing be postponed for a period of ninety days, and the court being fully advised in the premises,

Orders

1. The Special Master shall file herein so much of the testimony as has been taken in any of the 18 cases.

2. Orders on the applications to set down for hearing at once the motions for temporary injunctions are deferred for the present, and in lieu thereof by consent of counsel all of the 18 cases are set for final hearing the 5th day of October, 1908, or as soon thereafter as the court can hear the same upon such evidence as has been heretofore taken and such further oral and documentary evidence as then may be offered under the 67th rule in equity as amended.

(Signed) SMITH McPHERSON, *Judge*.

158 Afterwards, to-wit, on the 13th day of June, 1908, an affidavit was filed. Said affidavit is in words and figures as follows, to-wit:

STATE OF MISSOURI,
City of St. Louis, ss:

T. F. Wharton, being first duly sworn, says that he is Manager of the Saint Louis Office of Haskins & Sells, Certified Public Accountants, and has been for the past three years; that the firm of Haskins & Sells has been employed by the State of Missouri for the past two years as expert accountants in connection with the Maximum Freight Rate Litigation and the Passenger Rate Litigation; and that as Manager of the Saint Louis Office, this affiant has been connected with all of said work and is familiar therewith and with the length of time required for such work; that he was asked by the Attorney General on the 9th day of June, 1908, to come to Jefferson City for the purpose of making an examination of statements filed on that date by the following named railroads:

Missouri Pacific Railway Company,
Missouri, Kansas & Texas Railway System,
Chicago, Great Western Railway Company,
Chicago, Rock Island & Pacific Railway Company,
St. Louis & San Francisco Railroad Company,
St. Louis Southwestern Railway Company,
Chicago & Alton Railroad Company,
St. Joseph & Grand Island Railway Company,
Kansas City, Clinton & Springfield Railway Company,
Atchison, Topeka & Santa Fe Railway Company,

such examination to be made in order to determine the length of time necessary for the verification of the reports submitted by the aforesaid railroad companies and for the preparation of reports in relation thereto; that on the 10th day of June, 1908, this affiant went to Jefferson City for the purpose indicated; that he then received from Attorney General Hadley the statements re-
159 ferred to and more particularly described in Exhibits "A" to "J" hereto attached and made a part of this affidavit; Further, that in order to properly pass upon the reports referred to, it will be necessary, First, to verify the clerical accuracy of the figures themselves; Second, to verify the correctness of the comparisons made where there have been such comparisons; and where no comparisons have been made, it will be necessary to prepare, or have prepared, proper comparative statements; Third, to verify the correctness of the division of expenses between freight and passenger business and between state and Inter-State business; and Fourth, it will be necessary to compare the method used in dividing expenses with the method by which such expenses were divided by the Missouri Pacific, Burlington and Wabash Railroads, in the testimony already heard, in the Maximum Freight Rate cases. In addition to this, it will be necessary to secure information in other states, where there has been no change in Passenger Rates during the past two years, as to the effect on Passenger earnings of the business depression, which began about the middle of October, 1907. It will also be necessary to secure from other states where the two cent passenger

law has been in effect for some time, information showing the effect of the operation of the law on the earnings of the railroad companies.

In view of the amount of work above outlined that it will be necessary to do in connection with the statements hereinbefore referred to, this affiant believes that it will require the services of four or five experienced accountants for about three months to make the necessary verifications, prepare the necessary statistics, and place in proper form all such matter for the information of the Court.

T. F. WHARTON.

Subscribed and sworn to Before me this 11th day of June, 1908. Commission expires July 14, 1911.

[SEAL.]

FRANK WELLER,
Notary Public, City of St. Louis, Mo.

NOTE.—In the attached exhibits, the word "State" is used to indicate "Intra-State" business.

160

EXHIBIT "A."

Missouri Pacific Railway Company.

Statements Showing Passenger Earnings by Months for the Six Months Ended December 31, 1907 *and* 1906, *Divided Between State and Interstate, with Expenses for the Periods Named; also Reports Showing Freight Earnings and Expenses for the Same Periods.*

Method of dividing expenses and charges between freight and passenger, and State and Interstate business is not shown.

Summary of Intra-State Passenger Business Only, as Shown by Statements, for the Six Months Ended December 31.

	1907.	1906.	Increase.
July to October.....	$580,056.65	$564,593.97	$15,462.68
November and December	218,420.34	245,212.35	26,792.01*†
Total.....	$798,476.99	$809,806.32	$11,329.33*†
Operating Expenses..	728,676.35	664,730.09	63,946.26
Net Earnings	$69,800.64	$145,076.23	$75,275.59*†
Charges, not Including Interest	23,870.87	8,582.45†	32,453.32
Available for Interest and Dividends.	$45,929.77	$153,658.68	$107,728.91*†

*Decrease. [In red ink in copy.]

161 EXHIBIT "B."

Missouri, Kansas & Texas Railway System.

Various Monthly Statements of Passenger and Freight Earnings and Expenes for the Period from June 19 to December 31, 1907, with Statements by Months for the Period from June 19 to September 18, 1907 and 1906.

State and Inter-state business is not separated in reports.

Method of dividing expenses between freight and passenger business is not shown.

Summary of Passenger Earnings, Expenses and Charges, as Shown by Statements, for the Periods from June 19 to September 18.

	1907.	1906.	Increase.
Revenue	$365,573.83	$318,861.06	$46,712.77
Operating Expenses	235,619.96	225,148.53	10,471.43
Net Earnings	$129,953.87	$93,712.53	$36,241.34
Taxes and Rentals	25,381.17	27,261.31	1,880.14*
Available for Interest and Dividends	$104,572.70	$66,451.22	$38,121.48

* Decrease. [In red ink in copy.]

162 EXHIBIT "C."

Chicago Great Western Railway Company.

Statements (Supposed to be Filed by this Company) Showing Passenger Earnings Only, by Months, for the Periods from June 19 to September 18, 1907 and 1906, and also for the Three Months Ended September 30, 1907 and 1906, Divided between State and Inter-State.

No expenses are given.

Summary of Passenger Earnings, as Shown by Statements, for the Periods from June 19 to September 18.

	1907.	1906.	Decrease.
Intra-State	$12,568.23	$14,604.75	$2,036.52
Missouri to Other States	19,423.07	21,753.31	2,330.24
Other States to Missouri	20,297.69	18,783.71	1,513.98*
Other States through Missouri	1,225.86	1,047.64	178.22*
Between Points in Missouri Through Kansas	4,181.53	4,292.36	110.83
Total	$57,696.38	$60,481.77	$2,785.39

* Increase. [In red ink in copy.]

163 EXHIBIT "D."

Chicago, Rock Island & Pacific Railway Company.

Statement (Tentative Figures Only) for Period from June 19 (6 a. m.) to and Including September 18, 1907 and 1906, of Passenger and Freight Earnings, Expenses, and Taxes.

Business is not divided between State and Inter-state.
Method of dividing expenses is not given.

Summary of Passenger Earnings, Expenses, and Taxes, as Shown by Statement, for the Period Mentioned Above.

	1907.	1906.	Increase.
Revenue	$271,240.36	$246,701.04	$24,539.32
Operating Expenses:			
Maintenance of Way and Structures	$113,162.23	$85,857.89	$27,304.34
Maintenance of Equipment	48,251.58	37,947.48	10,304.10
Other Expenses	162,531.00	163,760.05	1,229.05*
Total	$323,944.81	$287,565.42	$36,379.39
Deficit from Operations	$52,704.45	$40,864.38	$11,840.07
Taxes	5,411.14	3,946.88	1,464.26
Deficit before deducting Interest, etc.	$58,115.59	$44,811.26	$13,304.33

* Decrease. [In red ink in copy.]

164 EXHIBIT "E."

St. Louis & San Francisco Railroad Company.

Statements by Months and in Total for the Three Months Ended September 30, 1907, of State and Inter-State Passenger and Freight Earnings, Expenses, and Charges.

Method of dividing expenses and charges between Freight and Passenger business is not shown: Expenses and Charges, and Miscellaneous earnings are divided between State and Inter-State business on the basis of the actual earnings of each class of business.

No comparisons are made with the same periods of the previous year, under three-cent law.

Summary of Intra-State Passenger Business, as Shown by Statements, for the Three Months Ended September 30, 1907.

Revenue	$718,992.65
Operating Expenses	599,298.01
Net Earnings	$119,694.64
Taxes and Rentals	24,104.07
Available for Interest and Dividends	$95,590.57

165 EXHIBIT "F."

St. Louis Southwestern Railway Company.

Statement for Six Months Ended December 31, 1907, of State and Inter-State Passenger and Freight Earnings, Expenses, and Charges, with Memorandum of Bases Used in Dividing Revenues, Expenses, and Charges Between Freight and Passenger and State and Inter-State Business.

Expenses are divided between Freight and Passenger business generally on basis of revenue train-miles. Expenses are divided between State and Inter-State business on basis of number of passengers one mile. Taxes are divided on basis of freight and passenger revenue of each class.

No comparisons are made with same period of previous year, under three-cent law.

Summary of Intra-State Passenger Earnings and Expenses, as Shown by Statement, for the Six Months Ended December 31, 1907.

Revenue	$29,625.21
Operating Expenses	31,407.27
Loss from Operation	$1,782.06
Taxes and Sundry Charges (Less Other Income)	1,224.67
Total Loss, before deducting Interest	$3,006.73

NOTE.—During the same period, the Inter-State business shows a profit, before deducting interest, of $12,589.49.

166 EXHIBIT "G."

Chicago & Alton Railroad Company.

Statements for the Month of September, 1907, and the Three Months Ended September 30, 1907, and for the Month of October, 1907, and the Four Months Ended October 31, 1907, of Passenger Earnings, Expenses, and Fixed Charges Divided Between State and Inter-State Business.

Method of apportioning expenses and charges to Passenger business are not shown. The method of dividing expenses between state and Inter-State business is not shown; but it is evidently on basis of passenger miles; charges divided between State and Inter-State Passenger business on basis of passenger miles.

No comparisons are made with same periods of previous year, under three-cent law.

Summary of Intra-State Passenger Earnings and Expenses, as Shown by Statements, for Four Months Ended October 31, 1907.

Revenue	$193,822.87
Operating Expenses	116,267.44
Available for Interest and Charges	$77,555.43
Amount of Interest and Charges	62,283.85*
Surplus for the period	$15,271.58

*Amount of Interest alone not given.

167 EXHIBIT "H."

St. Joseph & Grand Island Railway Company.

Statement of Passengers Carried and Revenue Received, by Months, for the Six Months Ended December 31, 1907 and 1906, Divided Between State and Interstate.

No expenses are given.

Summary of Passenger Earnings, as Shown by Statement, for the Six Months Ended December 31.

	1907.	1906.	Decrease.
Intra-State	$20,101.43	$25,115.93	$5,014.50
Inter-State	9,718.42	11,384.51	1,666.09
Total	$29,819.85	$36,500.44	$6,680.59

168 EXHIBIT "I."

Kansas City, Clinton & Springfield Railway Company.

Statements of Passengers Carried and Revenue Received, by Months, with Expenses Charged to Passenger Traffic, for the Period from June 19 to November 30, 1907 and 1906.

Expenses are not divided between State and Inter-state business. The method of apportioning expenses to Passenger business is not given.

Summary of Passenger Earnings and Expenses, as Shown by Statements, for the Periods Shown Above.

Earnings.	1907.	1906.	Increase.
Intra-State	$24,319.00	$26,159.57	$1,840.57*
Inter-State	22,171.38	22,043.20	128.18
Total	$46,490.38	$48,202.77	$1,712.39*
Operating Expenses	92,633.11	92,378.03	255.08
Deficit from Operations	$46,142.73	$44,175.26	$1,967.47

*Decrease. [In red ink in copy.]

169 EXHIBIT "J."

Atchison, Topeka & Santa Fe Railway Company.

Statements for the Months of July, August, and September, 1907 and 1906, Showing Passenger and Freight Business, with Expenses of Each, and Statements for the Three Months Ended September 30, 1907 and 1906, Showing Passenger and Freight Earnings, Expenses, and Charges Divided Between State and Inter-State Business.

Method of dividing expenses and charges between freight and passenger business is not shown. Expenses are divided between State and Inter-State business on basis of earnings of each class of business.

Summary of Intra-State Passenger Business, as Shown by Statements, for the Three Months Ended September 30.

	1907.	1906.	Increase.
Revenue from Passengers.	$56,329.47	$50,959.63	$5,369.84
Excess Baggage, Mail, Express, Etc.	24,531.16	24,162.71	368.45
Total	$80,860.63	$75,122.34	$5,738.29

Operating Expenses:			
Maintenance of Way and Structures	$31,779.37	$28,871.00	$2,908.37
Maintenance of Equipment	9,984.00	7,375.10	2,508.90
Other Expenses	28,706.04	27,955.42	750.62
Total	$70,469.41	$64,201.52	$6,267.89
Net Earnings	$10,391.22	$10,920.82	$529.60*†
Taxes and Rentals	1,647.99	1,624.68	23.31
Available for Interest and Dividends	$8,743.23	$9,296.14	$552.91*†

[*In red ink in copy.]
*†Decree.

170 Afterwards, to-wit, on the 13th day of June, 1908, a Notice was filed. Said notice is in words and figures as follows, to-wit:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY, Complanant,
vs.
HERBERT S. HADLEY, Attorney General, et al., Defendants.

And also

In Equity.

RAILROAD COMPANIES
v.
HERBERT S. HADLEY, Attorney General, et al., Being Cases Numbered 2989, 2990, 2991, 2995, 2997, 3001, 3002, 3003 and 3006.

Notice.

Complainants in above numbered cases will, upon June 13th, 1908, at 10 o'clock a. m., or as soon thereafter as counsel can be heard, make application to the court to set down for hearing the applications for temporary injunctions therein pending.

FRANK HAGERMAN,
Solicitor for Complainants.

Received copy of above notice this June 8th, 1908.
HERBERT S. HADLEY,
Attorney General;
JOHN KENNISH,
SANFORD B. LADD,
W. H. LEHMANN,
Solicitors.

171 Afterwards, to-wit, on the 21st day of September, 1908, the Master's Return to Order of June 13, 1908, was filed. Said Master's Return is in words and figures as follows:

Circuit Court of the United States, Western Division of the Western District of Missouri.

No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY
vs.
HERBERT S. HADLEY, Attorney General, et al.

Also

RAILROAD COMPANIES
vs.
HERBERT S. HADLEY, Attorney General, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004 and 3006.

Master's Return to Order of June 13, 1908, with all Testimony Taken.

To the Honorable the Judges of said Court:

In obedience to the order entered in the above mentioned cases, bearing date of June 13, 1908, the undersigned Special Master herewith returns all the testimony taken before him in the three cases in which testimony was taken, viz., the cases of the Missouri Pacific Railway Company, The Chicago, Burlington & Quincy Railway Company, and the Wabash Railroad Company, together with all the exhibits referred to in said testimony, and being all the testimony taken in any of the said eighteen cases.

Respectfully submitted,

F. L. SCHOFIELD,
Special Master.

Hannibal, Mo., September 18th, 1908.

172 Afterwards, to-wit, on the 5th day of October, 1908, the following order was filed and entered of record:

In the Circuit Court of the United States, Western District of Missouri.

In Equity. No. 2988.

St. Louis & San Francisco Railroad Co., Complainant,
vs.
Herbert S. Hadley, Attorney General, et al., Defendants.

And also

Railroad Companies
against
Herbert S. Hadley, Attorney General, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004, 3006, all in Equity in said Court.

Orders.

These cases come on for further hearing this October 5th, 1908, pursuant to the orders in all said cases made June 13th, 1908.

And the Court orders that each, all and every of said eighteen (18) cases be and the same are hereby continued until November ninth (9th) A. D. 1908, at ten o'clock A. M., at which time all of said cases will be called for trial, and the trials will then proceed from day to day until concluded. And said cases will be heard and decrees rendered on the evidence heretofore taken before the Special Master, and on such oral testimony and documentary evidence as may be offered by any of the parties to said cases pursuant to General Equity Rules 67 as amended. The evidence taken in any one of said cases shall be used in each, all and every of the other seventeen (17) cases in so far as the same will be pertinent or germane.

173 Said cases will be called and heard in the numerical order given said cases by the clerk; that is to say, the case with the lowest numerical number to be first heard, and the next lowest number next heard, and so on until all said cases are heard.

All agreements between any of the parties in any of said cases, whether such agreements are recited in orders of this court or by the Special Master, or whether such agreements are otherwise in writing, or verbally made, are hereby cancelled and will not be regarded by the Court, and future agreements, if any, will only be considered by the Court when reduced to writing and signed by the parties and filed with the clerk in said case or cases.

However, the orders, made in said cases June 13th, 1908, and the agreements therein recited are fully ratified and confirmed except only as to the change of date for hearing from October 5th, 1908, to November 9th, 1908.

And the applications for temporary injunction are continued

until November 9th, 1908, or until such later time as said applications may be presented, and the court may be able to hear the same.

Done in open court this October 5th, 1908.

(Signed) SMITH McPHERSON, *Judge*.

Afterwards, to-wit, on the 14th day of December, 1908, the following order was filed and entered of record, to-wit:

UNITED STATES OF AMERICA, *set*:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD CO.

VS.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al.

Also

In Equity

174 RAILROAD COMPANIES

VS.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004, and 3006.

MONDAY, *November* 9, *A. D.* 1908.

This day come the parties by their solicitors, the complainant by W. F. Evans, Esq., and Frank Hagerman, Esq., and the defendants by the Honorable Herbert S. Hadley, F. H. Lehmann, Esq., and Sanford B. Ladd, Esq. Thereupon this cause coming on regularly for final hearing, evidence on the part of complainant is begun and the same not being concluded at the hour of adjournment, further proceedings are postponed until tomorrow morning.

(Signed) SMITH McPHERSON, *Judge*.

Afterwards, to-wit, on the 14th day of December, 1908, the following order was filed and entered of record, to-wit:—

UNITED STATES OF AMERICA, *ss.*:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD CO.

vs.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al.

Also

In Equity.

RAILROAD COMPANIES

vs.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004 and 3006.

TUESDAY, *November* 10, 1908.

Now on this day again come the parties by their solicitors. Thereupon the hearing of evidence on the part of complainant is proceeded with and the same not being concluded at the hour of adjournment, further proceedings are postponed until tomorrow morning.

(Signed) SMITH McPHERSON, *Judge.*

175 Afterwards, to-wit, on the 14th day of December, 1908, the following order was filed and entered of record, to-wit:

UNITED STATES OF AMERICA, *set:*

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD CO.

vs.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al.

Also

In Equity.

RAILROAD COMPANIES

vs.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004, and 3006.

WEDNESDAY, *November* 11, 1908.

Now on this day again come the parties by their solicitors. Thereupon the hearing of evidence on the part of complainant is proceeded with and the same not being concluded at the hour of adjournment, further proceedings are postponed until tomorrow morning.

(Signed) SMITH McPHERSON, *Judge.*

Afterwards, to-wit, on the 14th day of December, 1908, the following order was filed and entered of record:

UNITED STATES OF AMERICA, *set:*

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD CO.

vs.

176 HERBERT S. HADLEY, Attorney General of the State of Missouri, et al.

Also

In Equity.

RAILROAD COMPANIES

vs.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004, and 3006.

THURSDAY, *November* 12, 1908.

Now on this day again come the parties by their solicitors. Thereupon the hearing of evidence on the part of complainant is proceeded

with and the same not being concluded at the hour of adjournment, further proceedings are postponed until tomorrow morning.

(Signed) SMITH McPHERSON, *Judge*.

Afterwards, to-wit, on the 14th day of December, 1908, the following order was filed and entered of record, to-wit:

UNITED STATES OF AMERICA, *set:*

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD CO.
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al.

Also

In Equity.

RAILROAD COMPANIES
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004, and 3006.

FRIDAY, *November* 13, 1908.

Now on this day again come the parties by their solicitors. Thereupon the hearing of evidence on the part of complainant is proceeded with and the same not being concluded at the hour of
177 adjournment, farther proceedings are postponed until to morrow morning.

(Signed) SMITH McPHERSON, *Judge*.

Afterwards, to-wit, on the 14th day of December, 1908, the following order was filed and entered of record:

UNITED STATES OF AMERICA, *sct:*

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD CO.

VS.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al.

Also

In Equity.

RAILROAD COMPANIES

VS.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004, and 3006.

SATURDAY, *November* 14, 1908.

Now on this day again come the parties by their solicitors. Thereupon the hearing of evidence on the part of complainant is proceeded with and the same not being concluded at the hour of adjournment, further proceedings are postponed until Monday, December 14th.

(Signed) SMITH McPHERSON, *Judge.*

Afterwards, to-wit, on the 15th day of December, 1908, the following order was filed and entered of record, to-wit:

178 UNITED STATES OF AMERICA, *sct:*

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD CO.

VS.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al.

Also

In Equity.

RAILROAD COMPANIES

VS.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004, and 3006.

Now on this day again come the parties by their solicitors. Thereupon the hearing of evidence on the part of complainant is proceeded

with and the same not being concluded at the hour of adjournment, further proceedings are postponed until tomorrow morning.

(Signed) SMITH McPHERSON, *Judge.*

Monday, December 14, 1908.

Afterwards, to-wit, on the 16th day of December, 1908, the following order was filed and entered of record:

UNITED STATES OF AMERICA, *set:*

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD CO.

vs.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al.

Also

In Equity.

RAILROAD COMPANIES

vs.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993,
179 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004 and 3006.

Now on this day again come the parties by their solicitors. Thereupon the hearing of evidence on the part of complainant is proceeded with and the same not being concluded at the hour of adjournment, further proceedings are postponed until tomorrow morning.

(Signed) SMITH McPHERSON, *Judge.*

Tuesday, December 15, 1908.

Afterwards, to-wit, on the 17th day of December, 1908, the following order was filed and entered of record, to-wit:

UNITED STATES OF AMERICA, *sct:*

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD CO.

vs.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al.

Also

In Equity.

RAILROAD COMPANIES

vs.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004, and 3006.

Now on this day again come the parties by their solicitors. Thereupon the hearing of evidence on the part of complainant is proceeded with and the same not being concluded at the hour of adjournment, further proceedings are postponed until tomorrow morning.

(Signed) SMITH McPHERSON, *Judge.*

Wednesday, December 16, 1908.

180 Afterwards to-wit, on the 18th day of December, 1908, the following order was filed and entered of record, to-wit:

UNITED STATES OF AMERICA, *sct:*

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD CO.

vs.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al.

Also

In Equity.

RAILROAD COMPANIES

vs.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004, and 3006.

Now on this day again come the parties by their solicitors. Thereupon the hearing of evidence on the part of complainant is pro-

ceeded with and the same not being concluded at the hour of adjournment, further proceedings are postponed until tomorrow morning.

(Signed) SMITH McPHERSON, *Judge.*

Thursday, December 17, 1908.

Afterwards, to-wit, on the 19th day of December, 1908, the following order was filed and entered of record, to-wit:

UNITED STATES OF AMERICA, *set:*

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD CO.
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al.

181

Also

In Equity.

RAILROAD COMPANIES
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004, and 3006.

Now on this day again come the parties by their solicitors. Thereupon the hearing of evidence on the part of complainant is proceeded with and the same not being concluded at the hour of adjournment, further proceedings are postponed until tomorrow morning.

(Signed) SMITH McPHERSON, *Judge.*

Friday, December 18, 1908.

Afterwards, to-wit, on the 21st day of December, 1908, the following order was filed and entered of record, to-wit:

UNITED STATES OF AMERICA, *sct:*

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD CO.

vs.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al.

Also

In Equity.

RAILROAD COMPANIES

vs.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004, and 3006.

This day again come the parties by their attorneys. Thereupon evidence on the part of the complainant, St. Louis & San Francisco Railroad Co., is concluded and further proceedings are postponed until next Tuesday morning at nine o'clock.

(Signed) SMITH McPHERSON, *Judge.*

Saturday, December 19, 1908.

182 Afterwards, to-wit, on the 22nd day of December, 1908, the following order was filed and entered of record, to-wit:

UNITED STATES OF AMERICA, *sct:*

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD CO.

vs.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al.

Also

In Equity.

RAILROAD COMPANIES

vs.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004 and 3006.

Now on this day again come the parties by their solicitors. Thereupon the hearing of evidence on the part of defendants is begun and

the same not being concluded at the hour of adjournment, further proceedings are postponed until tomorrow morning.

(Signed) SMITH McPHERSON, *Judge.*

Tuesday, December 22, 1908.

Afterwards, to-wit, on the 23rd day of December, 1908, the following order was filed and entered of record, to-wit:

UNITED STATES OF AMERICA, *sct:*

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD CO.

vs.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al.

Also

183 In Equity.

RAILROAD COMPANIES

vs.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004, and 3006.

This day again come the parties by their attorneys. Thereupon further evidence upon the part of the defendants is heard and the same not being concluded at the hour of adjournment further proceedings are postponed until Monday, December 28, 1908, at nine o'clock.

(Signed) SMITH McPHERSON, *Judge.*

Wednesday, December 23, 1908.

Afterwards, to-wit, on the 28th day of December, 1908, the following order was filed and entered of record, to-wit:

UNITED STATES OF AMERICA, *sct:*

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD CO.

vs.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al.

Also

In Equity.

RAILROAD COMPANIES

vs.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004, and 3006.

This day again come the parties by their solicitors. Thereupon the hearing of evidence is proceeded with and further proceedings are postponed until tomorrow morning.

(Signed) SMITH McPHERSON, *Judge.*

December 28, 1908.

184 Afterwards, to-wit, on the 29th day of December, 1908, the following order was filed and entered of record, to-wit:

UNITED STATES OF AMERICA, *sct:*

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD CO.

vs.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al.

Also

In Equity.

RAILROAD COMPANIES

vs.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004, and 3006.

This day again come the parties by their solicitors. Thereupon

the hearing of evidence is proceeded with and further proceedings are postponed until tomorrow morning.

(Signed) SMITH McPHERSON, *Judge.*

December 29, 1908.

185 Afterwards, to wit, on the 29th day of December, 1908, the following Stipulation was filed:—

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 2999. Equity.

QUINCY, OMAHA & KANSAS CITY RAILROAD COMPANY, Complainant,
vs.
HERBERT S. HADLEY et al., Defendants.

Stipulation.

It is agreed by and between the parties hereto that this cause shall abide by the orders, judgment and decree, that may be made and entered in cause No. 3003, Chicago Great Western Railway Company vs. Herbert S. Hadley, Attorney General, et al.

J. G. TRIMBLE,
FRANK HAGERMAN,
Solicitors for Complainant.
HERBERT S. HADLEY,
Per JOHN KENNISH,
Solicitors for Defendants.

186 Afterwards, to wit, on the 29th day of December, 1908, the following Order was filed and entered of record:—

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 2999. Equity.

QUINCY, OMAHA & KANSAS CITY RAILROAD COMPANY, Complainant,
vs.
HERBERT S. HADLEY et al., Defendants.

Now on this day in accordance with the stipulation of parties filed herein, it is ordered that this cause shall abide by the orders, judgment and decree, that may be made and entered in cause No. 3003, Chicago Great Western Railway Company vs. Herbert S. Hadley, Attorney General, et al.

(Signed) SMITH McPHERSON, *Judge.*

December 29, 1908.

187 Afterwards, to-wit, on the 30th day of December, 1908, Complainants' Requests for Findings of Fact was filed. Said Requests for Findings of Fact are in words and figures as follows, to-wit:—

Complainants' Requests for Findings of Fact.

1. The complainants are the eighteen railroad corporations owning and operating lines of railway in Missouri, engaged generally in doing therein with the same property, the entire state and interstate railroad business. With the exception hereinafter stated as to the St. Louis & Hannibal and the Kansas City, Clinton & Springfield, they constitute great trunk lines of railroads, carrying in and through Missouri the commerce of the country, state and interstate, reaching and connecting various commercial centers like Chicago, St. Louis, Kansas City, Omaha, Denver, St. Paul, Memphis, New Orleans, and Galveston. Some of them, like the Atchison, Topeka & Santa Fe and the Chicago, Rock Island & Pacific operate through trans-state trains, running from Chicago to the Pacific Ocean. All operate, in connection with other roads at connecting points and large centers so as to carry all the traffic of the state, freight and passenger, not only that which is state but also that which is interstate, and that which is destined to and from other roads and other states. The interstate business may originate or terminate in the state, or in some instances both there originate and terminate or it may pass through the state with origin and destination both outside thereof. The St. Louis & Hannibal Railway is located wholly within the state, extending from Hannibal, Missouri, through a valuable and populous part of the state, to a point upon the Wabash Railway and is the only one of the complainants, the line of which does not cross the state line. The Kansas City, Clinton & Springfield Railway extends from Olathe, Kansas, (a small town about 20 miles from Kansas City, Mis-
188 souri), for a distance of about eleven miles to the state line from whence it runs through the southwestern part of the state, but not as in the case with the other railways reaching with its own trains any of the basing points or great commercial or market centers of the state.

2. The same properties, trains and facilities are necessarily used by each company, in conducting both the state and interstate business. It would not be practicable to operate in any other way. If separate cars or trains were required to be operated for the state and interstate business or separate facilities used for each, no one of the complainants could for the business of any or all classes in this state pay operating expenses, the public would be greatly inconvenienced, and enormous investments would be required in order to meet changed conditions. It is absolutely essential to the safety, convenience and economy of passengers and shippers for the business to be conducted as it is, without any attempted separation in conducting upon the same trains and with the same facilities both the state and interstate business.

3. Missouri is peculiarly located so far as concerns the question

whether the fixing a state rate directly affects an interstate rate. The state is midway between the Great Lakes and the Gulf of Mexico, and midway between the Atlantic and Pacific Oceans. The vast quantities of traffic, and volumes of travel between the east and west and north and south necessarily cross the entire state. Two great rivers bound the state upon the east and west. Upon these rivers are located great markets and commercial centers. Those at Kansas City being the largest between the Mississippi River and the Rocky Mountains. All freight rates from the east to the west and vice versa are made up of a rate to and from these rivers plus the rate across the state. This has always been so and whatever the reason therefor, as a practical railway problem will always be so if intelligent, experienced and practical railway men are permitted to fix rates upon a fair, reasonable and intelligent basis. The river points, therefore,
189 have become and are rate basing centers. Great cities and markets have been built up by reason of and upon the faith of this fact. At such points great railroad properties have been acquired and extensive terminals provided in view thereof. In many instances the railways there terminate. If a different method were adopted a chaotic condition would be created, business of these cities and markets would be seriously and unduly disturbed and embarassed and investments there made largely affected. The actual result is that the short line mileage across the state actually controls and fixes the freight rate by every other railway, no matter what the distance or points of origin and destination may be. From Hannibal to St. Joseph, Missouri, is 198 miles by the Chicago, Burlington & Quincy Railway. This is the shortest rail distance between the rivers. From St. Louis to St. Joseph it is at least 300 miles, to Kansas City 280 and upward. Whenever a freight rate per mile is fixed for the 198 miles, the short route between the rivers, the total rate between all Mississippi and Missouri River points must conform thereto, even though the distance be 300 or more miles. This situation applies to every competitive point between the rivers of which there are many of magnitude and importance. The traffic between St. Louis and Missouri river points, both state and interstate, is enormous. Every railway carrying freight must be at the expense of carrying it from 280 to 300 or more miles, yet receive therefor a rate based upon a distance of 198 miles. Unless it should do so it would not be able to handle enough freight between river points to justify the running of trains. Unless the rates were so fixed no substantial business would be done between the river points because every shipper to or from the east would be compelled to ship by the short line. St. Louis merchants could not compete for western business. In the passenger traffic the universal rule is that the short line between any two stations fixes and establishes the rate. In other words, the rate
190 being fixed per mile, the longer route will not be able to carry passengers between any two points if its total rate exceeds the short line rate. In actual railway operation the state line is wholly arbitrary. Unless the mileage rate is the same, passengers will, if the state rate be lower than the interstate, buy tickets or pay fare to a state line station and there provide themselves anew with

tickets thus making an interstate journey partly state. Experience has demonstrated this to be noticeably true. In July and August, 1907, when a two cent fare was in force in Missouri upon state business and three cents upon interstate this practice became quite general. It became absolutely necessary as a practical railroad question to put in force the same rate for state and interstate travel; otherwise it would have become impossible to keep track of a large part of the interstate travel and a large unnecessary expense been incurred by the work imposed at the state line stations. For these and many other reasons shown by the evidence, including those mentioned in paragraph 4, it is a fact that no mileage state rate, for freight or passengers, extending across the state of Missouri, can be established which does not actually and immediately directly affect the interstate rate, not only in but out of the state. It therefore, must as a fact, be said that the rates fixed by the laws complained of in the bills, do directly and immediately affect and regulate interstate commerce.

4. Two of the great trunk lines in Missouri are the Missouri Pacific and the Chicago, Burlington & Quincy Railways. Both extend from St. Louis to St. Joseph,—the Burlington lines between these points are wholly within the state; those of the Missouri Pacific pass out of Missouri at Kansas City, into Kansas, leaving that state at Atchison, coming again into Missouri. All traffic over the Missouri Pacific from St. Louis to St. Joseph is interstate. If the state rate, freight or passenger, be lawfully fixed the Burlington must conform thereto on its St. Louis and St. Joseph business. When it so does this rate must be met by the Missouri Pacific or else the latter will get none of the business. This situation is applicable to all the Missouri Pacific business between St. Joseph and Kansas City and all
191 points east thereof. The Burlington and other roads as direct and as connecting carriers compete therefor. A very large and substantial part of the business of the Missouri Pacific is carried from St. Joseph to Kansas City and St. Joseph and points between and is thus affected. The same situation exists as to other companies. The Chicago Great Western Railway between St. Joseph and Kansas City runs from Missouri, thence into Kansas, and back into Missouri, making the business interstate. The lines of the Burlington and St. Joseph & Grand Island companies between these points are wholly within the state. The lines of the St. Louis & San Francisco and Kansas City Southern companies between Kansas City and Joplin and the great lead and zinc mining districts of Missouri, start from Kansas City, Missouri, extend into Kansas, and thence back into Missouri, thus making the journey interstate. The Missouri Pacific line between these points is wholly state. The Missouri, Kansas & Texas also runs from Missouri into Kansas and back into Missouri, competing with lines wholly in the state. In each of these instances a very large and substantial part of the business of each of said companies originates and terminates in Missouri yet by passing in its journey out of the state is interstate. In each instance if the competing line wholly in the state is by state law compelled to lower its rate, those doing such interstate business must likewise reduce their rates between the same state points or do none of the business. All the

complainants have joint tariffs with the others, doing one with the other, a through connecting business. The laws complained of in the bills do therefore directly affect and interfere with a substantial part of traffic of the state which is interstate commerce originating and ending in the state, particularly much of that kind upon the lines of the Missouri Pacific, Chicago Great Western, St. Louis & San Francisco and Missouri, Kansas & Texas companies. The laws complained of are general in their nature, making neither classification nor exception. So by reason of the peculiar location of many of the large roads in Missouri a unique situation is presented whereby
192 wholly independent of the facts set forth in paragraph 3, state rates certainly directly and immediately affect interstate traffic both freight and passenger. So great an amount of interstate business is affected thereby that if it was permitted to be free from state regulation, and the other companies in the state refused to conform to the rates fixed by the laws by the bills herein questioned, they as competitors, whether original or connecting carriers, would lose so much state business that they would be compelled to carry at an actual loss that which remained of that class of traffic.

5. Much difficulty in the cases has been obviated by complainants making up and delivering to defendants, from time to time, statements showing the earnings and expenses for certain periods, which seem to have been treated by the parties as sufficiently illustrative of the situation to enable a fair determination of the controversy to be had. Complainants have extended to defendants every facility, given them the fullest opportunity, and granted them every possible courtesy, so that any experts for defendant have had every opportunity to call for any figures and to make up any statement upon any theory desired. Inasmuch as the same periods of time, in the various statements submitted, were adopted by both parties, the findings as to each company will follow along the same line, and actually mean that such period should be considered as representative of the situation generally. Inasmuch as the freight act of 1907 covered the same commodities as the Acts of 1905 but allowed an increased earning, it follows as was conceded by defendants at the trial, if the freight act of 1907 was confiscatory, that of 1905 was likewise confiscatory but to a greater degree. It must therefore be said that the rates fixed by the laws complained
193 of in the bills do, in fact, directly and immediately affect inter-state rates and directly regulate a large and substantial part of interstate commerce of the state and interstate carriage, freight and passenger, upon the Missouri Pacific, Chicago & Great Western, St. Louis & San Francisco, Kansas City Southern and Missouri, Kansas & Texas Railways and their connecting carriers.

6. The earnings in a state, from state and interstate business, can be ascertained with a reasonable degree of certainty from the way-bills, tickets and cash fares. The books and papers of complainants are and always have been so made and kept that it is a mere matter of expense, though considerable, and detail work, though extensive, to make the ascertainments. The freight earnings consist of earnings from transportation and from miscel-

laneous services, such as switching, demurrage, storage and track rentals. Passenger earnings are those from passenger fares and miscellaneous services, such, for instance, as mail, express and excess baggage.

7. No serious difference has arisen in the separate cases as to the ascertainment of the expense of doing the entire passenger, freight or miscellaneous business in the state. So, with a reasonable degree of certainty, and with little controversy, this division can be and has been made. Inasmuch as these expenses are incurred by the use of the same properties, car tracks and facilities, there is not and never has been any certain known fixed rule or method by which, to a mathematical certainty, these different expenses so separated can be divided, as between state and interstate business. The method to be adopted in making the division was the chief serious controversy at the trial. Complainants claim that the division should be upon the revenue basis, in which way there can in the first instance, be assigned to each class of business, freight, miscellaneous freight, passenger and miscellaneous passenger, or to all or any of them combined, a reasonable and fair amount as state and inter-
194 state expenses respectively, to which should be added such sum as would represent the extra cost of doing state over interstate business. The defendants claim that the division should be, for freight, upon the ton-mile basis, and for passenger, upon the passenger-mile basis, and that miscellaneous freight earnings and expenses should be included in freight and miscellaneous passenger earnings in those of passenger. As the revenue proportion is, in most instances, nearly twice as much as the ton-mile proportion, the reason for the difference is apparent. By the revenue basis is meant assigning as expense of state business, of any particular kind or kinds, such proportion of the total expense in the state on that class of business as the earnings from that class of state business bears to all the earnings (state and interstate) from the same class; or, as often put, ascertain what proportion all expenses are of all earnings, and then multiply the state earnings of any class thereby, thus finding a sum which would equal the expenses to be there assigned. By the ton-mile basis is meant the assignment to state freight expenses such proportion of all freight expense as the number of tons per mile of state freight bears to the total ton-miles of all freight hauled in the state. By the passenger-mile basis is meant the assignment as state passenger expenses such proportion of all passenger expenses as the number of passengers in state business carried one mile bears to the whole number of passengers (state and interstate) carried one mile.

Another method of division of freight expense is upon the basis of the number of tons carried, regardless of distance. In results there is little difference, as a division on this basis is prac-
195 tically the same as that which is shown by the revenue basis. Neither party has adopted it as a basis of division.

8. There being no method by which the division of expenses as between state and inter-state, can be made to a mathematical certainty, calculations have been made upon every reasonable basis,

and a determination reached, in the light of all the evidence, of a reasonable sum, in money, which should be actually charged as the expense of doing each class of state business. To this should be added the extra cost of doing the state business. The sums hereinafter found were first actually ascertained by a division upon a revenue basis. Then, after considering all things, they were and are adopted as the proper sums to reasonably represent an actual fair apportionment of expenses as between state and inter-state business. Any apportionment of freight expenses, upon a ton-mile basis would charge too small an amount as state expense. This would make necessary the use of a multiple of extra cost, large enough to make the sum total of state freight expense equal that hereinafter accurately found to reasonably represent the cost as it ought from the evidence to be found. Any apportionment of passenger expense, upon the passenger mile or any other basis which would not make the state passenger expense equal in dollars the sum hereinafter found, would be unfair and unjust.

9. All things considered, the evidence duly weighed, there being no abnormal feature, the cost of doing the different classes of state business, ascertained as between state and interstate, upon a revenue basis, brings a result in dollars in Missouri which is fair, just, reasonable and representative. That method of ascertainment is much better and more satisfactory than any other which has, by anyone, been suggested. If the law be that some one theory must be adopted, then the revenue basis would be and is hereby accepted as correct. However, in these cases, although the ascertainment is actually made upon the revenue basis, the figures, when ascertained, have been considered in the light of all the facts and circumstances in evidence, and then in and of themselves and independently of their method of ascertainment, also adopted as fairly and
196 justly representing the cost and expense of doing each class of state business.

10. There is an extra cost and expense of doing state over interstate business, both as to freight and passenger. This extra cost is as to each complainant, for freight, much in excess of fifty per cent of all freight expense, and for passenger in excess of twenty-five per cent of all passenger expense. While the extra cost is much in excess of these figures, yet, for the purpose of this case, they may, as to each complainant, be adopted as the minimum. How much more the extra cost is, need not be now determined, because at the minimum figures thus fixed, the rates in question are, in view of the case, unreasonable and confiscatory. If the ton-mile method of apportionment of freight expenses were adopted, the multiple of extra cost of doing each class of state business would be fixed at such figures as would make the entire expense as increased, equal to that hereinafter found, because, the total amount as found, regardless of the method of finding same, being that which fairly represents the minimum actual cost and expense of doing such state business.

11. After ascertaining the cost of doing the different classes of state business, and deducting same from the earnings there should

be and there is deducted from the state freight earnings of each complainant such sum as would equal its diminution of earnings *of each complainant such sum as would equal its diminution of earnings* upon the commodities covered by the act, if the rates thereon fixed thereby had been charged. This has been done as to each complainant.

12. In the case of each complainant, other than the St. Louis & Hannibal Railway Company, and Kansas City, Clinton & Springfield Railway Company, the earnings should be sufficient, in any event, to fully meet its proportion of the interest upon the bonded indebtedness, there being nothing out of the ordinary as to such indebtedness, and nothing to indicate that the prop-
197 erty was unduly bonded. Such interest has been regularly paid for years and there is nothing to indicate any improper bonding. The proportion of the property assignable to any of the state traffic, upon a revenue basis, is actually worth more than enough to justify such return. The proportions of the property of the St. Louis & Hannibal and the Kansas City, Clinton & Springfield respectively, assignable to any of the state traffic, are worth enough to justify some substantial return. However, irrespective of this finding and eliminating any question of interest, the rates in question are as hereinafter shown insufficient to make a fair and reasonable return upon the value of the portion of the property of each complainant devoted to the use.

13. Each class of business of each complainant should have assigned to it its fair proportion of the value of the entire property in the state as that upon which it is entitled to a return. Such a division hereafter made, is upon a revenue basis. The result reached thereby is so fair, just and reasonable that they are, in view of all the facts, adopted, regardless of the method of ascertainment. There has been fixed a minimum valuation for the railway property in the state. The property is worth at least that much. There is and should be assigned to each class of state business such proportion of such valuation as the gross state revenue of that class, bears to the gross revenue in the state. When this is done there is ascertained a sum which, in any event, is, considering all of the evidence, and regardless of the method by which the result is reached, the very least value upon which a reasonable return should be had as to that class of business. These figures, as to values, are probably less than the actual values, but for the purposes of the cases are taken as figures representing a minimum valuation upon which at least a fair return should be had, if any, because the rates in question at such valuation are confiscatory. It is therefore unnecessary to consider how much more the property is worth.

198 14. There are, therefore, in the cases tried, findings made and hereinafter set forth, showing: (*a*) All earnings, state and interstate, freight, miscellaneous freight, passenger and miscellaneous passenger; the proportions which state and interstate freight and passenger earnings (exclusive of miscellaneous) bear to all combined state and interstate freight and all passenger earnings (in-

cluding miscellaneous) respectively, and that which they bear to all earnings in the state. (*b*) Miscellaneous freight and miscellaneous passenger earnings, (undivided as between state and interstate) with the proportions they are of all earnings and of, respectively, all freight and passenger. (*c*) All expenses, divided in proportion to revenue, as between all kinds of freight and passenger business, including miscellaneous but undivided as between state and interstate. (*d*) A deduction from all state freight (exclusive of miscellaneous), of such proportion of the expenses of all freight and all passenger respectively, as the freight and passenger respectively, exclusive of miscellaneous, bore to all freight and passenger earnings. (*e*) A like deduction of extra cost of doing such business respectively, including miscellaneous. (*f*) A deduction from freight earnings of sums equalling the diminution which would have been caused if the rates fixed by the act had been charged. (*g*) The value of that portion of complainants' property assignable to the particular traffic. This is ascertained by taking, for each class of business, of the entire value in the state such proportion as the earnings upon that portion of the business bear to all the earnings in the state.

The result thus reached and the sums finally ascertained irrespective of the methods by which the apportionments are made, in the light of all the facts and circumstances in evidence, are fair just and reasonable, and such as ought, in each instance, to be fixed. Anything in the way of a return less than six per cent. interest upon the part of the property assignable to any traffic in question is unreasonable and confiscatory.

199 15. The complainants made out and served their statements upon defendants, not dividing the miscellaneous as between state and interstate, for the reasons therein thus set forth:

"Inasmuch as differences might arise between complainant and the state as to the method of apportioning miscellaneous freight, and mail, express and miscellaneous passenger earnings, and as no question as to such earnings is here involved, same have to avoid confusion and unnecessary controversy, been left undivided as between state and interstate earnings."

No request was ever made for such a division, though it could have been made by complainants had a request been made therefor by defendants. The actual division could have been made by defendants had they so desired. If an accurate division were necessary it would even now be called for, regardless of the time necessary to be devoted to the work, though neither party is entitled to have the case delayed to obtain the information. To do so would make necessary a possible change in some percentages, though not enough to change the result. As neither party thought an actual division was necessary, a court could well assume as the proofs clearly show, that if made, the final result of the case would not be changed thereby. As a matter of fact it would be fairer and better to deal alone with the effect of the laws in question upon strictly freight and passenger business. At the trial, however, the state's experts made an estimated division of these miscellaneous

earnings, both freight and passenger, as between state and interstate, by arbitrarily assigning the same in the proportion of the revenue received from purely freight and purely passenger earnings respectively. This was an arbitrary basis, unwarranted in fact and made in a method which assigned entirely too great a proportion to the state business and improperly and unnecessarily enlarged the state earnings. It is, therefore rejected. From the figures hereinafter set forth, it will be seen that the miscellaneous earnings are but a small proportion of all earnings, especially of the freight.
200 To avoid confusion in making new tabulations, the arbitrary division made by the state's experts may be assumed to be correct, still this would make no difference in the result of the cases. This because there should be charged against these earnings a sum equalling the revenue proportion of all the expense of freight and passenger respectively, plus an extra cost of doing state business. The sums ascertained in this way would be the fair, just and equitable charge as the minimum expense of doing such business. When so made there should be assigned as the valuation upon which there should be a return, such proportion of the entire value as the respective earnings from miscellaneous freight and passenger, bear to all earnings. When this is done it is apparent that no fair return is received upon this class of business. Hence, if the miscellaneous earnings were added to the freight and passenger earnings respectively, so as to consider all freight as a whole, and also all passenger as a whole, the result reached will not and could not be changed. Had a desire been, in proper time, expressed for an accurate division of miscellaneous earnings as between state and interstate, according to the facts, it would have been ascertained, so that the loss would have been shown, considering freight and passenger earnings alone, and also such loss considering the miscellaneous with each. However, the miscellaneous passenger business consists in the main of mail and express, and it is difficult to see why, in ascertaining the losses or gains under a two cent fare law there should be included either losses or gains from the miscellaneous earnings, especially when the main portion of the earnings are more in the nature of freight earnings from a passenger service.

16. The expense of doing all the state business, when ascertained on the revenue basis, estimating the extra cost of doing the state freight business at the minimum of at least 50 per cent, and the passenger business at the minimum of at least 25 per cent, shows a sum which would be fair and reasonable to adopt as the cost of
201 doing the entire state business. So that, if all the state business be considered as a whole and be done at the rates now in existence and those fixed by the laws questioned in the bills, there is no doubt that there is no reasonable or compensatory return upon the value of the portion of the property assignable to the whole of the state traffic. It is not here necessary to determine whether, as many competent railroad managers say, that no state rates are compensatory. It is true that such will be the result in Missouri, if the laws in question are enforced. There is a reason why, there, it is true. That state is peculiar in its central location, its class of business,

and the location of its cities. The short line between the rivers, as a transportation problem, necessarily fixes the rate for the enormous freight traffic passing to and from the east and the west. There are located at the two rivers two of the great markets of the United Sates. Freight rates are, by state laws and state commissions, fixed to a large extent upon a mileage basis. The result is that the vast traffic between Kansas City and St. Louis is done at the expense of a carriage of 280 miles and upwards, whereas, the compensation of the carrier is fixed upon the theory of a carriage of 198 miles. So with the passenger business. There are many large centers upon each side of the state, particularly the great cities, St. Louis, Kansas City and St. Joseph. There are many large competitive cities in the interior. There are great and marked differences in the respective distances between competitive points on the many different lines in the state. As passenger rates are fixed by law upon the mileage basis the necessary result is that every company has numerous instances in which it is put to the expense of a carriage of a long distance but is paid at a rate for a much shorter distance. Taking these facts into consideration, together with the extra cost of doing state business, it is a fact, whether all state business be treated as a whole or subdivided into classes, the rates
202 now in existence and those fixed by the laws in question, fail to bring any fair or substantial return; nothing like one-half of the rate of interest which is fixed by law.

17. The adoption of the two cent fare did not cause any substantial increase in travel. At first a great many persons rode as state passengers to and from the state line, so that the state obtained more revenue than that to which it was entitled. Any statement of the passenger business which includes July and August, 1907, is unduly fair to the state. However, state and interstate fares soon became the same, and the longer the period over which the figures are extended the greater will be the loss shown.

18. If the companies had, after the two-cent passenger rate went into effect, been permitted to charge the amount which they, prior thereto, actually received per passenger per mile, they would have received this much more money:

Name of road.	Period covered, months.	From State passengers.	From Interstate passengers.
St. L. & S. F. R. R. Co.....	12	666,008.72	509,738.63
A. T. & S. F. Ry. Co.....	12	30,885.52	66,271.03
C. R. I. & P. Ry. Co. and St. L. K. C. & C. Ry. Co.....	12	124,469.14	111,178.60
K. C. So. Ry. Co.....	12	7,044.49	27,260.75
St. L. & H. Ry. Co.....	12	37,275.38	145.23
M. K. & T. Ry. Co.....	12	140,593.46	63,815.12
K. C. C. & S. Ry. Co.....	12	14,654.57	10,846.91
C. B. & Q. R. R. Co.....	12	394,878.77	261,556.41
C. G. W. Ry. Co.....	12	65,945.96	46,162.17

19. In the case of the St. Louis & San Francisco Railway there were included in the expenses sums paid as rentals under a lease of

the Kansas City, Fort Scott & Memphis Railway. The common stock of the latter company is owned by the St. Louis & San
203 Francisco, which operates the property under a lease, requiring it to pay to the holders of preferred stock of the Memphis as a rental a sum equal to a four-per-cent annual dividend thereon. There is nothing to impeach the fairness of the lease or its terms. It has been in existence for years. This rental has always been treated as an operating expense and not included in the fixed charges, nor included in the stock issue or bonded indebtedness or interest charge. It is therefore treated as it should be and in fact is, part of the expenses. The total amount charged in the accounts hereinafter set forth as part of the state freight expense is $8,428.56 and as part of the state passenger expense $7,443.68. If these items should be eliminated from the expenses, there would be no difference in the result.

20. The minimum values of the railway properties in the state belonging to and used by the complainants in Missouri are:

	Miles.	Value.	Value per mile.
St. Louis and San Francisco (1907)	1688.89	61,238,414.70	36,259.00
Atchison, Topeka & Santa Fe (1907)	348.31	15,091,212.00	43,326.00
Chicago, Rock Island & Pacific (1907)	515.48	19,102,507.59	37,058.00
Kansas City Southern (1908)	174.48	8,039,084.40	46,075.00
St. Louis & Hannibal (1907)	120.61	1,143,007.02	9,477.00
Missouri, Kansas & Texas (1908)	506.21	20,894,229.93	41,276.00
Chicago Burlington & Quincy (1908)	1136.34	53,172,907.83	46,793.00
Kansas City Clinton & Springfield (1907)	151.01	2,380,222.48	15,762.00
Chicago Great Western (1907)	84.43	3,605,236.38	42,701.00

The sums thus found as the minimum values in all cases except those of the Kansas City, Clinton & Springfield and St. Louis & Hannibal, are in fact the same as estimated by the assessing officers of Missouri. In the cases of those two companies it is one third less.
Nevertheless the valuations thus found are, aside from and in-
204 dependently of the fact that they were estimates of the state found in view of all the facts and circumstances in evidence to be the minimum fair and reasonable values of the properties.

21. There are now made and submitted, tables showing the earnings and expenses and assignable fixed charges and value of the complainants' property in the cases tried. From the expenses, even taxes and rentals are excluded, though probably they should not be. The periods over which the findings extend were, at the trial, adopted by the parties as fairly representative. They are in fact sufficiently fairly representative of the actual earnings and expenses, under ordinary and usual conditions, to be used as tests to determine whether the rates permit of a reasonable return upon the investment. They were supported by statements covering other years and longer periods.

These tables treat state freight as distinct from miscellaneous freight, and state passenger as distinct from miscellaneous passenger, but do not charge against either freight or passenger earnings any expense of doing miscellaneous business, nor do they include in the assignable proportion of value or interest any part of that assignable to the miscellaneous business. Nor do these tables include the St. Louis Southwestern, Missouri Pacific, St. Louis, Iron Mountain & Southern, Quincy, Omaha & Kansas City, Wabash, St. Joseph & Grand Island, Chicago, Milwaukee & St. Paul, or Chicago & Alton Railways. This because the cases of these companies, by stipulations, are to abide the result in other cases as to which findings are made. These tabulations contain the figures agreed upon by the experts for both sides if the court should adopt the results reached by a revenue basis.

205 (A) St. Louis and San Francisco R. R. Company.

(1) Period Covered.

The representative period taken by the experts upon both sides as to this company *are* for three months ending September 30th, 1907, and in that period the earnings and expenses were as set forth in subdivisions (1) and (2).

(2) Earnings and Percentages.

Character.	Amount.	Per cent of all freight earnings.	Per cent of all earnings.
Interstate freight.....	$2,214,002.82	76.94	54.68
State freight.....	577,192.84	20.04	14.26
Miscellaneous freight.....	86,814.57	3.02	2.14
Total.....	2,878,010.23	100.	71.08
		Per cent of all passenger earnings.	
Interstate passenger.....	368,687.43	31.49	9.11
State passenger.....	599,051.59	51.17	14.79
Miscellaneous passenger...	203,077.28	17.34	5.02
Total.....	1,170,816.30	100.	28.92
Grand Total.....	4,048,826.53	.....	100.

(3) Expenses, Less Taxes & Rentals, Undivided Between State and Interstate.

All freight expense, including miscellaneous.....	$1,802,813.26
All passenger expenses including miscellaneous.....	974,816.61

	Freight.	Passenger.
Percentage of expenses to earnings.....	62.64%	83.26%

206 (4) Taxes and Rentals.

Freight	$112,452.04
Passenger	38,979.63
Total	151,431.67

(5) State Earnings and Expenses.

	Freight.	Passenger.
State earnings above shown are	577,192.84	599,051.59
Expense of state business	361,644.33	498,716.20
Leaving	215,548.51	100,335.39
Less Taxes & Rentals (Par. 4)	22,760.29	20,097.90
Leaving	192,788.22	80,237.49
Deduct extra cost of state business freight estimated at 50%, passenger 25%	131,425.08	53,907.36
Leaving	61,363.14	26,330.13
Deduct diminution in earnings if the state freight rates in question had been charged	11,389.27	.....
Leaving as surplus	49,973.87	26,330.13

(6) Valuation.

Valuation of property in state is $61,238,414.70 of which 14.26% is assignable to state freight and 14.79% to state passenger business	2,183,149.48	2,264,290.38
Six per cent upon this part for the period covered is	130,988.97	135,857.42

(7) Return on Value.

In the way of a return upon the assignable value found in subdivision 6, the surplus shown in subdivision 5 is	2.29%	1.16%

(8) Interest Charge.

The actual interest charge paid, divided in the assignable proportions shown in subdivision 6 is	$116,792.45	$121,133.27

207 (B) ATCHISON, TOPEKA & SANTA FE R. R. COMPANY.

(1) Period Covered.

The representative period taken by the experts upon both sides as to this company *are* for six months ending Dec. 31, 1907, and in that period the earnings and expenses were as set forth in subdivisions (1) and (2).

(2) Earnings and Percentages.

Character.	Amount.	Per cent of all freight earnings.	Per cent of all earnings.
Interstate freight	$1,872,915.00	90.05	67.72
State freight	141,133.00	6.79	5.10
Miscellaneous freight	65,833.56	3.16	2.38
Total	2,079,881.56	100.	75.20
		Per cent of all passenger earnings.	
Interstate passenger	355,318.12	51.81	12.85
State Passenger	104,370.19	15.22	3.77
Miscellaneous passenger	226,080.00	32.97	8.18
Total	685,768.31	100.	24.80
Grand Total	2,765,649.87	.....	100.

(3) Expenses, Less Taxes & Rentals, Undivided Between State and Interstate.

All freight expense including miscellaneous	1,382,738.65
All passenger expense, including miscellaneous	572,167.20

	Freight.	Passenger.
Percentage of expenses to earnings	66.48%	83.43%

208 (4) Taxes & Rentals.

Freight	32,361.50
Passenger	10,854.04
Total	43,215.54

(5) State Earnings and Expenses.

	Freight.	Passenger.
State earnings above (par. 2) shown are	141,133.00	104,370.19
Expense of state business	92,581.89	87,834.09
Leaving	48,551.11	16,536.10
Less Taxes & Rental	3,503.41	901.74
Leaving	45,047.70	15,634.36
Deduct extra cost of state business freight estimated at 50%, passenger 25%	41,859.55	17,947.71
Leaving	3,188.15	Def. 2,313.35
Deduct diminution in earnings if the state freight rates in question had been charged	13,885.87	.....
Leaving	Def. 10,697.72	Def. 2,313.35

(6) Valuation.

Valuation of property in state is $15,091,212.00, of which 5.10% is assignable to state freight, and 3.77% to state passenger business	384,825.91	284,469.35
Six per cent upon this part for the period covered is	23,089.35	17,068.16

(7) Return on Value.

In the way of a return upon the assignable value found in subdivision 6, the deficit shown in subdivision 5 is	Nothing %	Nothing %

(8) Interest Charge.

The actual interest charge paid, divided in the assignable proportions shown in subdivision 6 is	17,934.56	13,257.51

209 (C) CHICAGO, ROCK ISLAND & PACIFIC RY. COMPANY.

(1) Period Covered.

The representative period taken by the experts upon both sides as to this company *are* for three months ending September 30, 1907, and in that period the earnings and expenses were as set forth in subdivisions (1) and (2)

(2) Earnings and Percentages.

Character.	Amount.	Per cent of all freight earnings.	Per cent of all earnings.
Interstate freight	$665,228.16	79.38	59.86
State freight	$150,953.68	18.02	13.58
Miscellaneous freight	$21,815.70	2.60	1.96
Total	$837,997.54	100.	75.40
		Per cent of all passenger earnings.	
Interstate passenger	$113,524.21	41.53	10.22
State passenger	114,853.04	42.02	10.33
Miscellaneous passenger	44,980.08	16.45	4.05
Total	$273,357.33	100.	24.60
Grand Total	$1,111,354.87	.....	100.00

(3) Expenses, Less Taxes and Rentals, Undivided Between State and Interstate.

All freight expense, including miscellaneous	$619,199.73
All passenger expense, including miscellaneous	317,633.62

	Freight.	Passenger.
Percentages of expenses to earnings	73.89%	116.20%

210 (4) Taxes and Rentals.

Freight	$74,227.43
Passenger	21,015.44
Total	$95,242.87

(5) State Earnings and Expenses.

	Freight.	Passenger.
State earnings above (par. 2) shown are	$150,953.68	$114,853.04
Expense of state business	111,579.80	133,469.65
Leaving	$39,373.88	Def. 18,616.61
Less taxes and rentals	13,375.78	8,830.68
Leaving	$25,998.10	Def. 27,447.29
Deduct extra cost of state business freight estimated at 50%, passenger 25%	41,919.82	17,501.61
Leaving	Def. $15,921.72	Def. 44,948.90

Deduct diminution in earnings if the state freight rates in question had been charged...	9,989.43	.....
Leaving.....	Def. $25,911.15	Def. 44,948.90

(6) Valuation.

Valuation of property in state is $19,-102,507.59, of which 13.58% is assignable to state freight and 10.33% to state passenger business	$648,530.13	$493,322.26
Six per cent upon this part for the period covered is.....	$38,911.81	$29,599.34

(7) Return on Value.

In the way of a return upon the assignable value found in subdivision 6, the deficit shown in subdivision 5 is.....	Nothing %	Nothing %

(8) Interest Charge.

The actual interest charge paid, divided in the assignable proportions shown in subdivision 6, is.....	$24,907.02	$18,946.21

211 (D) KANSAS CITY SOUTHERN RAILWAY COMPANY.

(1) Period Covered.

The representative period taken by the experts upon both sides as to this Company *are* for six months ending June 30, 1908, and in that period the earnings and expenses were as set forth in subdivisions (1) and (2).

(2) Earnings and Percentages.

Character.	Amount.	Per cent of all freight earnings.	Per cent of all earnings.
Interstate freight.....	$702,249.91	79.35	67.11
State freight.....	38,748.76	4.38	3.70
Miscellaneous freight.....	144,046.62	16.27	13.77
Total.....	$885,045.29	100.	84.58
		Per cent of all passenger earnings.	
Interstate passenger.....	$89,504.58	55.47	8.55
State passenger.....	31,865.28	19.75	3.05
Miscellaneous passenger...	39,973.54	24.78	3.82
Total.....	$161,343.40	100.	15.42
Grand Total.....	1,046,388.69	.....	100.00

(3) Expenses, Less Taxes and Rentals, Undivided Between State and Interstate.

All freight expense, including miscellaneous	$571,297.54
All passenger expense, including miscellaneous	141,432.56

	Freight.	Passenger.
Percentages of expenses to earnings	64.55%	87.66%

212 (4) Taxes and Rentals.

Freight	$22,331.70
Passenger	3,737.37
Total	$26,069.07

(5) State Earnings and Expenses.

	Freight.	Passenger.
State earnings above (par. 2) shown are	$38,748.76	$31,865.28
Expense of state business	25,022.83	27,932.93
Leaving	$13,725.93	3,932.35
Less taxes and rentals	978.13	738.13
Leaving	$12,747.80	3,194.22
Deduct extra cost of state business freight estimated at 50%, passenger 25%	11,711.60	5,346.15
Leaving	$1,036.20	Def. 2,151.93
Deduct diminution in earnings if the state freight rate in question had been charged	2,957.58	.....
Leaving	Def. $1,921.38	Def. $2,151.93

(6) Valuation.

Valuation of property in state is $8,039,084.40, of which 3.70% is assignable to state freight, and 3.05% to state passenger business	$148,723.06	$122,596.04
Six per cent upon this part for the period covered is	8,923.38	7,355.76

(7) Return on Value.

In the way of a return upon the assignable value found in subdivision 6, the deficit shown in subdivision 5 is	Nothing %	Nothing %

(8) Interest Charge.

The actual interest charge paid, divided in the assignable proportions shown in subdivision 6, is.....	$5,295.38	$4,365.11

213 (E) ST. LOUIS & HANNIBAL RAILWAY COMPANY.

(1) Period Covered.

The representative period taken by the experts upon both sides as to this company *are* for the year ending June 30, 1908, and in that period the earnings and expenses were as set forth in subdivisions (1) and (2).

(2) Earnings and Percentages.

Character.	Amount.	Per cent of all freight earnings.	Per cent of all earnings.
Interstate freight	$51,735.05	36.25	24.61
State freight	$87,941.99	61.62	41.84
Miscellaneous freight	$3,044.11	2.13	1.45
Total.....	$142,721.15	100.	67.90
		Per cent of all passenger earnings.	
Interstate passenger	$198.19	0.29	0.09
State passenger	52,667.38	78.04	25.05
Miscellaneous passenger	14,619.99	21.67	6.96
Total.....	$67,485.56	100.	32.10
Grand Total.....	$210,206.71	.....	100.

(3) Expenses, Less Taxes and Rentals, Undivided Between State and Interstate.

All freight expense, including miscellaneous.....	$117,908.81
All passenger expense, including miscellaneous.....	68,343.04

	Freight.	Passenger.
Percentages of expenses to earnings.....	82.61%	101.27%

(4) Taxes and Rentals.

	Freight	$5,994.07
214	Passenger	2,273.61
	Total.....	$8,267.68

(5) State Earnings and Expenses.

	Freight.	Passenger.
State earnings above (par. 2) shown are	$87,941.99	$52,667.38
Expense of state business	$72,655.40	$53,334.91
Leaving	$15,286.59	Def. 667.53
Less taxes and rentals	$3,693.55	1,774.32
Leaving	$11,593.04	Def. 2,441.85
Deduct extra cost of state business freight estimated at 50%, passenger 25%	$12,026.69	2,444.68
Leaving	Def. $433.65	Def. $4,886.53
Deduct diminution in earnings if the state freight rates in question had been charged	15,126.02	.....
Leaving	Def. $15,559.67	Def. 4,886.53

(6) Valuation.

Valuation of property in state is $1,143,007.02, of which 41.84% is assignable to state freight, and 25.05% to state passenger business	$478,234.14	$286,323.26
Six per cent upon this part for the period covered is	$28,694.05	$17,179.40

(7) Return on Value.

In the way of a return upon the assignable value found in subdivision 6, the deficit shown in subdivision 5 is	Nothing %	Nothing %

(8) Interest Charge.

The actual interest charge paid, divided in the assignable proportions shown in subdivision 6, is	$16,359.44	$9,794.55

215 (F) Missouri, Kansas and Texas Railway Company.

(1) Period Covered.

The representative period taken by the experts upon both sides as to this company *are* for July, August, October, November and December, 1907, and January, 1908, and in that period the earnings and expenses were as set forth in subdivisions (1) and (2).

(2) Earnings and Percentages.

Character.	Amount.	Per cent of all freight earnings.	Per cent of all earnings.
Interstate freight	$1,333,455.26	81.73	57.89
State freight	$277,416.52	17.01	12.04
Miscellaneous freight	$20,603.37	1.26	0.89
Total	$1,631,475.15	100.	70.82
		Per cent of all passenger earnings.	
Interstate passenger	$303,214.54	45.12	13.16
State passenger	$246,368.53	36.66	10.70
Miscellaneous passenger	$122,458.22	18.22	5.32
Total	$672,041.29	100.	29.18
Grand Total	$2,303,516.44	.....	100.00

(3) Expenses, Less Taxes and Rentals, Undivided Between State and Interstate.

All freight expense, including miscellaneous	$1,010,643.65
All passenger expense, including miscellaneous	$516,589.98

	Freight.	Passenger.
Percentages of expense to earnings	61.95%	76.87%

216 (4) Taxes and Rentals.

Freight	$119,017.87
Passenger	$58,465.49
Total	$177,483.36

(5) State Earnings and Expenses.

	Freight.	Passenger.
State earnings above (par. 2) shown are	$277,416.52	$246,368.53
Expenses of state business	$171,910.48	$189,381.89
Leaving	$105,506.04	$56,986.64
Less taxes and rentals	$20,244.94	$21,433.45
Leaving	$85,261.10	$35,553.19

Deduct extra cost of state business freight estimated at 50%, passenger 25%	$66,590.77	$27,482.59
Leaving	$18,670.33	$8,070.60
Deduct diminution in earnings if the state freight rates in question had been charged	$20,222.85	.....
Leaving as surplus	Def. $1,552.52	$8,070.60

(6) Valuation.

Valuation of property in state is $20,894,229.93, of which 12.04% is assignable to state freight and 10.70% to state passenger business	$1,257,832.64	1,117,841.30
Six per cent upon this part for the period covered is	$75,469.96	67,070.48

(7) Return on Value.

In the way of a return upon the assignable value found in subdivision 6, the surplus shown in subdivision 5 is	Nothing %	0.72%

(8) Interest Charge.

The actual interest charge paid, divided in the assignable proportions shown in subdivision 6, is	$62,439.68	$55,490.41

217 (G) CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY.

(1) Period Covered.

The representative period taken by the experts upon both sides as to this company *are* for the year ending June 30, 1908, and in that period the earnings and expenses were as set forth in subdivisions (1) and (2).

(2) Earnings and Percentages.

Character.	Amount.	Per cent of all freight earnings.	Per cent of all earnings.
Interstate freight	$6,454,699.87	78.75	52.40
State freight	$1,580,529.64	19.28	12.83
Miscellaneous freight	$161,579.41	1.97	1.31
Total	$8,196,608.92	100.00	66.54

		Per cent of all passenger earnings.	
Interstate passenger	$1,-77,788.27	43.15	14.43
State passenger	$1,611,702.92	39.11	13.09
Miscellaneous passenger ...	$731,021.89	17.74	5.94
Total.....	$4,120,513.08	100.	33.46
Grand Total.....$12,317,122.00		.....	100.

(3) Expenses (Less Taxes and Rentals) Undivided Between State and Interstate.

All freight expense, including miscellaneous.....	$6,793,610.60
All passenger expense, including miscellaneous.....	$3,527,311.81

	Freight.	Passenger.
Percentages of expenses to earnings.....	82.88	85.60

218 (4) Taxes and Rentals.

Freight	Cr. $12,235.30
Passenger	Cr. $6,152.58
Total.....	Cr. $18,387.88

(5) State Earnings and Expenses.

	Freight.	Passenger.
State earnings above (par. 2) shown are.....	$1,580,529.64	$1,611,702.92
Expense of state business.....	$1,324,453.83	$1,489,746.71
Leaving.....	$256,075.81	$121,956.21
Less Taxes and rentals.....	Cr. $2,487.99	2,798.50
Leaving.....	$258,563.80	$124,754.71
Deduct extra cost of state business freight estimated at 50%, passenger 25%	$484,129.29	$158,205.70
Leaving.....	Def. $225,565.49	Def. $33,450.99
Deduct diminution in earnings if the state freight rates in question had been charged...	$112,533.71	$.....
Leaving.....	Def. $338,099.20	Def. $33,450.99

(6) Valuation.

Valuation of property in state is $53,172,907.83, of which 12.83% is assignable to state freight, and 13.09% to state passenger business	$6,822,084.07	$6,960,333.63
Six per cent upon this part for the period covered is	$409,325.04	$417,620.02

(7) Return on Value.

In the way of a return upon the assignable value found in subdivision 6, the deficit shown in subdivision 5 is	Nothing %	Nothing %

219 (H) KANSAS CITY, CLINTON & SPRINGFIELD RY. COMPANY.

(1) Period Covered.

The representative period taken by the experts upon both sides as to this company *are* for the year ending June 30th, 1908, and in that period the earnings and expenses were as set forth in subdivisions (1) and (2).

(2) Earnings and Percentages.

Character.	Amount.	Per cent of all freight earnings.	Per cent of all earnings.
Interstate freight	$116,893.60	68.27	41.04
State freight	$45,003.15	26.29	15.80
Miscellaneous freight	$9,319.58	5.44	3.27
Total	$171,216.33	100.	60.11
		Per cent of all passenger earnings.	
Interstate passenger	$41,145.00	36.22	14.45
State passenger	$47,646.80	41.95	16.73
Miscellaneous passenger	$24,797.39	21.83	8.71
Total	$113,589.19	100.	39.89
Grand Total	$284,805.52	.....	100.

(3) Expenses (Less Taxes & Rental) Undivided Between State and Interstate.

All freight expense, including miscellaneous	$98,988.29
All passenger expense, including miscellaneous	$138,384.77

	Freight.	Passenger.
Percentages of expenses to earnings	57.81%	121.83

220 (4) Taxes and Rentals.

Freight	$9,182.36
Passenger	$5,749.38
Total	$14,931.74

(5) State Earnings and Expenses.

	Freight.	Passenger.
State earnings above (par. 2) shown are	$45,003.15	$47,646.80
Expense of state business	$26,024.02	$58,052.41
Leaving	$18,979.13	Def. $10,405.61
Less taxes and rentals	$2,414.04	$2,411.86
Leaving	$16,565.09	Def. $12,817.47
Deduct extra cost of state business freight estimated at 50%, passenger 25%	$8,483.30	$4,760.44
Leaving	$8,081.79	Def. $17,577.91
Deduct diminution in earnings if the state freight rates in question had been charged	$2,970.21	.....
Leaving	$5,111.58	Def. $17,577.91

(6) Valuation.

Valuation of property in state is $2,380,222.48, of which 15.80% is assignable to state freight, and 16.73% to state passenger business	$376,075.15	$398,211.22
Six per cent upon this part for the period covered is	$22,564.51	$23,892.67

(7) Return of Value.

In the way of a return upon the assignable value found in subdivision 6, the surplus shown in subdivision 5 is	1.36%	Nothing %

(8) Interest Charge.

The actual interest charge paid, divided in the assignable proportions shown in subdivision 5, is	$23,881.78	$25,287.48

221 (1) CHICAGO GREAT WESTERN RAILWAY COMPANY.

(1) Period Covered.

The representative period taken by the experts upon both sides as to this company *are* for six months, ending Dec. 31, 1907, and in that period the earnings and expenses were as set forth in subdivisions (1) and (2).

(2) Earnings and Percentages.

Character.	Amount.	Per cent of all freight earnings.	Per cent of all earnings.
Interstate freight	$224,169.58	86.02	57.39
State freight	$29,129.36	11.18	7.45
Miscellaneous freight	$7,280.24	2.80	1.86
Total	$260,579.18	100.	66.70
		Per cent of all passenger earnings.	
Interstate passenger	$72,360.87	55.62	18.53
State passenger	$38,105.03	29.28	9.75
Miscellaneous passenger	$19,643.99	15.10	5.02
Total	$130,109.89	100.	33.30
Grand Total	$390,689.07	.....	100.

(3) Expenses (Less Taxes and Rentals) Undivided Between State and Interstate.

All freight expense, including miscellaneous	$198,887.69
All passenger expense, including miscellaneous	$126,355.88

	Freight.	Passenger.
Percentages of expenses to earnings	76.33%	97.11%

222 (4) Taxes and Rentals.

Freight	$12,294.18
Passenger	11,312.16
Total	$23,606.34

(5) State Earnings and Expenses.

	Freight.	Passenger.
State earnings above (par. 2) shown are	$29,129.36	$38,105.03
Expenses of state business	$22,235.64	$36,996.98
Leaving	$6,893.72	$1,108.05
Less taxes and rentals	$1,374.49	$3,312.25
Leaving	$5,519.23	Def. $2,204.20
Deduct extra cost of state business, freight estimated at 50%, passenger 25%	$9,347.72	$6,090.35
Leaving	Def. $3,828.49	Def. $8,294.55
Deduct diminution in earnings if the state freight rates in question had been charged	$1,893.41	.....
Leaving	Def. $5,721.90	Def. $8,294.55

(6) Valuation.

Valuation of property in state is $3,605,236.38, of which 7.45% is assignable to state freight, and 9.75% to state passenger business	$134,295.06	$175,755.27
Six per cent upon this part for the period covered is	$8,057.70	$10,545.32

(7) Return of Value.

In the way of a return upon the assignable value found in subdivision 6, the surplus shown in subdivision 5 is	.....%	.....%

(8) Interest Charge.

The actual interest charge paid, divided in the assignable proportions shown in subdivision 6, is	$7,164.08	$9,375.81

223 22. If it should be assumed that the state experts correctly divided miscellaneous earnings as between state and interstate, which they did not do, still the fair and reasonable sum to be charged against the state part of these miscellaneous freight and passenger earnings is the revenue proportion of the entire freight and passenger expense plus a minimum extra cost for miscellaneous freight and for miscellaneous passenger. When this is done it clearly appears that even without an allowance for extra cost, the result could not be changed if the findings already made as to state freight

and passenger had included the miscellaneous, or had the miscellaneous of each class been separately considered. In no case would there be any fair return. If miscellaneous were considered separately, or if considered with freight and passenger respectively, the result would not be effected. This clearly appears from a tabulation now made as to each company with the exception of the St. Louis and Hannibal Ry. Company and the Kansas City, Clinton and Springfield Ry. Co., which are omitted for the reason that the State compiled and submitted no figures for these roads, showing: (*a*) The state experts' division of miscellaneous, though in fact it is too favorable to the state. (*b*) A deduction from earnings of the percentage proportion of expenses to earnings as done in Smyth v. Ames, 169 U. S. 466, which is the same as the revenue basis. (*c*) The minimum extra cost now found of doing the state over interstate being a mere fraction less than, and practically the same as, found as to the strictly freight and passenger. (*d*) The proportion that state's part of the miscellaneous was of all earnings, and the amount of return to which the company was entitled at six per cent interest upon that proportion of the value of the entire property as hereinbefore and now found to be fair, reasonable and just.

224 (1) St. Louis and San Francisco Railroad Company.

	Freight.			Passenger.		
	Amount.	% of all freight.	% of all earnings.	Amount.	% of all pass.	% of all earnings.
Miscellaneous state earnings.....	$17,963.25	00.62	00.44	$125,704.84	10.74	3.10
Less revenue proportion of expense 00.62% freight, and 10.74% passenger	$11,177.44			$104,695.30		
Leaving	$6,775.81			$21,009.54		
Less increased cost freight 50%, passenger 25%	$5,588.72			$22,713.23		
Leaving	$1,187.09			Def. $1,703.69		
Less Taxes and Rentals	$697.20			$4,186.41		
	$489.89			Def. $5,890.10		
Amount due at 6% interest on portion of value assignable to the state part of the traffic	$4,041.74			$28,475.86		
Total Deficit..	$3,551.85			$34,365.96		

225 (2) Atchison, Topeka and Santa Fe Railway Company.

	Freight.			Passenger.		
	Amount.	% of all freight.	% of all earnings.	Amount.	% of all pass.	% of all earnings.
Miscellaneous state earnings	$4,608.35	00.22	00.17	$51,320.16	7.48	1.86
Less revenue proportion of expense 00.22% of freight and 7.48% passenger.	$3,042.02			$42,798.11		
Leaving	$1,566.33			$8,522.05		
Less increased cost freight 50%, passenger 25%.....	$1,521.01			$9,726.84		
Leaving	45.32		Def.	1,204.79		
Less Taxes and rentals	71.20			811.88		
Def..	25.88		Def.	2,016.67		
Amount due at 6% interest on portion of value assignable to the state part of the traffic	$769.65			$8,420.90		
Total Deficit..	$795.53			$10,437 57		

226 (3) Chicago, Rock Island and Pacific Railway Company.

	Freight.			Passenger.		
	Amount.	% of all freight.	% of all earnings.	Amount.	% of all pass.	% of all earnings.
Miscellaneous state earnings	$4,035.91	00.48	00.36	$22,620.48	8.28	2.04
Less revenue proportion of expense 00.48% of freight and 8.28% passenger.	$2,966.88			$26,300.06		
Leaving	$1,069.03		Def.	$3,679.58		
Less increased cost freight 50%, passenger 25%	$1,483.44			$5,907.98		
Leaving ..Def.	$414.41		Def.	$9,587.56		
Less Taxes and Rentals	356.29			1,740.08		
Def.	$770.70		Def.	$11,327.64		
Amount due at 6% interest on portion of value assignable to the state part of the traffic	$1,031.54			$5,845.37		
Total deficit...	$1,802.24			$17,173.01		

227 (4) Kansas City Southern Railway Company.

	Freight.			Passengers	
	Amount.	% of all freight.	% of all earnings.	Amount.	% of all pass.	% of all earning.
Miscellaneous state earnings	$7,533.64	00.85	00.72	$10,493.05	6.50	1.00
Less revenue proportion of expense 00.85% freight and 6.50% passenger.	$4,856.03			$9,193.12		
Leaving	$2,677.61			$1,299.93		
Less increased cost freight 50%, passenger 25%	$2,428.02			$2,107.35		
Leaving	249.59			Def. 807.42		
Less taxes and Rentals	189.82			242.93		
	59.77			Def. $1,050.35		
Amount due at 6% interest on portion of value assignable to the state part of the traffic	$1,736.44			$2,411.73		
Total deficit ..	$1,676.67			$3,462.08		

228 (5) Missouri, Kansas and Texas Railway Company.

	Freight.			Passenger.	
	Amount.	% of all freight.	% of all earnings.	Amount.	% of all pass.	% of all earnings.
Miscellaneous state earnings	$3,547.90	00.22	00.15	$54,885.77	8.17	2.38
Less revenue proportion of expense 00.22% freight and 8.17% passenger.	$2,223.42			$42,205.40		
Leaving	$1,324.48			$12,680.37		
Less increased cost freight 50%, passenger 25%	$1,111.71			$9,505.26		
Leaving	212.77			$3,175.11		
Less taxes and Rentals	261.84			$4,776.63		
Def.	49.07			Def. $1,601.52		
Amount due at 6% interest on portion of value assignable to the state part of the traffic	$940.24			$14,918.48		
Total deficit ..	$989.31			$16,520.00		

229 (6) Chicago, Burlington and Quincy Railroad Company.

	Freight.			Passenger.	
	Amount.	% of all freight.	% of all earnings.	Amount.	% of all pass.	% of all earnings.
Miscellaneous state earnings	$31,743.33	00.39	00.26	$347,600.91	8.44	2.82
Less revenue proportion of expense 00.39% freight and 8.44% passenger.	$26,495.08			$297,705.12		
Leaving	$5,248.25			$49,895.79		
Less increased cost freight 50%, passenger 25%	$13,247.54			$66,666.19		
Leaving ..Def.	7,999.29			Def. 16,770.40		
Less Taxes and Rentals .....Cr.	47.72			Cr. 519.28		
Def.	$7,951.57			Def. $16,251.12		
Amount due at 6% interest on portion of value assignable to the state part of the traffic	$8,294.97			$89,968.56		
Total deficit ..	$16,246.54			$106,219.68		

230 (7) Chicago Great Western Railway Company.

	Freight.			Passenger.	
	Amount.	% of all freight.	% of all earnings.	Amount.	% of all pass.	% of all earnings.
Miscellaneous state earnings	$837.23	00.32	00.21	$6,777.18	5.21	1.73
Less revenue proportion of expense 00.32% freight, and 5.21% passenger.	$636.44			$6,583.14		
Leaving	$200.79			$194.04		
Less increased cost freight 50%, passenger 25%	$318.22			$1,541.54		
Leaving ..Def.	117.43			Def. $1,347.50		
Less taxes and Rentals	39.34			589.36		
Def.	$156.77			Def. $1,936.86		
Amount due at 6% interest on portion of value assignable to the state part of the traffic	$227.13			$1,871.12		
Total deficit ..	$383.90			$3,807.98		

231 23. If the commodities affected by the Freight Act of 1907 are alone considered, irrespective of and separate from the earnings from other freight, the rates are plainly confiscatory, and not only fail to bring any return upon the portion of the property devoted to such use, but do not enable any complainant to meet operating expenses. The following tables are in this respect submitted as findings of the earnings of and expenses fairly chargeable to these commodities for a period which is representative.

(1) ST. LOUIS & SAN FRANCISCO.

For the three months' representative period the result is:

The gross earnings upon the commodities affected by the Freight Act of 1907, for three months, are $56,699.26, or $226,797.04 for the year, which is 10.94% of all state freight earnings. Applying this to the state freight statement, there is the result:

All earnings from this class of state freight were for 3 months	$56,699.26
All state freight expenses were $382,405.32 for three months, and 10.94% thereof chargeable to these commodities	41,835.14
	$14,864.12
Diminution if the rates fixed by the Act of 1907 had been charged	11,389.27
	$3,474.85
10.94% of Extra cost at 50%, $130,246.94	$14,249.02
10.94% of Interest, $117,775.28	12,884.62
10.94% of Valuation, $132,091.26	14,450.78

232 (2) ATCHISON, TOPEKA & SANTA FE.

The gross earnings upon the commodities affected by the Freight Act of 1907, for six months are $47,137.00, or $94,274.00 for the year, which is 33.4% of all state freight earnings. Applying this to the findings as to state freight, there is this result:

All earnings from this class of state freight were for six months	$47,137.00
All state freight expenses were $96,085.30 and 33.4% thereof chargeable to these commodities	32,092.49
Leaving	$15,044.51
Diminution if the rates fixed by the Act of 1907 had been charged	13,885.87
	$1,158.64
33.4% of Extra cost at 50%, $43,443.57	$14,510.15
33.4% of Interest, $17,934.56	5,990.14
33.4% of Valuation, $23,089.55	7,711.91

(3) CHICAGO, ROCK ISLAND & PACIFIC.

For the three months representative period July, August and September, 1907, there was this result:

Revenue actually received on said commodities being 7.24% of total revenue actually received on all freight traffic in Missouri for said three months.....	$60,639.75
Operating expenses, taxes, rentals and hire of equipment applicable to said revenue for said three months arrived at as follows:	
Total operating expenses, taxes, rentals and hire of equipment, assigned to freight traffic $693,427.16. Proportion ($7.24% based on revenue) assigned to commodities affected by maximum freight act of 1907	$50,204.13

233

Net revenue on said commodities for said three mos....	$10,435.62
Deduct the diminution in revenue if said act of 1907 had been in effect.....	9,989.43
Leaving	$446.19
Deduct extra cost of transporting state freight traffic, assuming such extra cost to be 50%. Schedule 4 shows that 50% increased cost increases revenue percentage from 18.02% to 24.79% an increase of 6.77% or 37.57%. 37.57% of 7.24% equals 2.72%. 2.72% of total operating expenses, excluding taxes, rentals, etc., $618,100.58, equals	$16,812.34
Deficit.....	$16,366.15

(4) KANSAS CITY SOUTHERN.

The gross earnings upon commodities affected by the Act of 1907 for six months on $14,014.31 or $28,028.62 for the year, which is 36.17% of all state freight earnings. Applying this to the state freight statement there is this result:

All earnings from this class of state freight were for six months	$14,014.31
All state freight expenses were $26,000.96 and 36.17% of this amount would be.....	9,404.55
Leaving.....	$4,609.76
Diminution if rates fixed by the Act of 1907 had been charged	2,957.58
	$1,652.18
36.17% of extra cost at 50%, $11,735.85.....	$4,244.86
36.17% of interest, $5,295.38.....	1,915.34
36.17% of valuation, $13,768.01.....	4,979.89

234 (5) ST. LOUIS & HANNIBAL.

The gross earnings upon commodities affected by the Act of 1907 for one year are 33%, or $29,020.86.

Applying this to the state freight statement there is this result:

All earnings from this class of freight were	$29,020.86
All state freight expenses were $76,348.95 and 33% of this amount is	25,195.15
Leaving	3,825.71
Diminution if rates fixed by the Act of 1907 had been charged	15,126.02
Deficit	11,300.31
33% of extra cost at 50%, $12,026.69	$3,968.81
33% of interest, $16,359.44	5,398.61
33% of valuation, $43,041.07	14,203.55

(6) MISSOURI, KANSAS & TEXAS.

Gross earnings on commodities affected by the Act of 1907 for six months (at 33% of total state freight earnings) would be $91,547.45 or $183,094.90 for the year.

Applying this to the state freight statement there is this result:

All earnings from this class of freight were, for six months	$91,547.45
All state freight expenses were $192,155.42 and 33% of this amount would be	63,411.29
Leaving	$28,136.16
Diminution, if rates fixed by Act of 1907 had been charged	20,222.85
	$7,913.31
33% of extra cost at 50%, $73,879.86	$24,380.00
33% of interest, $62,439.68	20,605.09
33% of valuation, $75,469.96	24,905.09

235 (7) CHICAGO, BURLINGTON & QUINCY.

The gross earnings upon commodities affected by the Act of 1907 for one year were $526,532.72, which is 31.92% of all state freight earnings, for the year 1905.

Applying this to the state freight statement there is this result:

All earnings from this class of state freight were for one year (31.92% of $1,580,529.64)	$504,505.06
All state freight expense- were $1,322,165.90, and 31.92% of this amount is	422,035.35
Leaving	$82,469.71
Diminution, if the rates fixed by the Act of 1907 had been charged	117,388.07
Deficit	$34,918.36
31.92% of extra cost at 50%, $472,092.76	$150,692.00
31.92% of valuation, $409,325.04	130,656.55

(8) KANSAS CITY, CLINTON & SPRINGFIELD RAILWAY COMPANY.

The gross earnings upon commodities affected by the Act of 1907, for one year are $14,365.00. Since the figures of the company do not show miscellaneous freight earnings, they are estimated at 31.92% of all state freight, based on C. B. & Q. figures, as the percentage is the smallest with that company.

Applying this to the state freight statement there is this result:

Earnings from this class of state freight were, for one year	$14,365.00
All state freight expenses were $28,438.06 and 31.92% of this amount is	9,077.43
Leaving	5,287.57
Diminution, if rates fixed by the Act of 1907 had been charged	2,970.21
	$2,317.36
236	
31.92% of extra cost at 50%, $8,483.30	$2,707.87
31.92% of interest, $23,881.78	7,624.06
31.92% of valuation, $33,846.76	10,803.89

Such an estimate as to this company is reasonable, in that this company is actually losing money upon all its business, so that a finding as to these matters is unnecessary.

(9) CHICAGO GREAT WESTERN.

Gross earnings on commodities affected by the Act of 1907 for three months were $7,817.28, or $31,269.12 for the year, which is 57.81% of all state freight earnings.

Applying this to the state freight statement, there is this result:

All earnings from this class of state freight were (earnings of 3 months $7,817.28 x 2)	$15,634.56
All state freight expenses were $23,610.13 and 57.81% of this amount would be	13,649.02
Leaving	$1,985.54
Diminution, if rates fixed by the Act of 1907 had been charged	1,777.34
	$208.20
57.81% of extra cost at 50%, $9,347.72	$5,403.92
57.81% of interest, $7,164.08	4,141.55
57.81% of valuation, $8,057.70	4,658.16

(10) OTHER COMPANIES.

As the cases of the other companies abide the result of that of some other case, a finding in this respect is unnecessary.

237 Afterwards, to-wit, on the 30th day of December, 1908, a Certificate of the Trial Judge was filed. Said Certificate is in words and figures as follows, to-wit:—

In the Circuit Court of the United States, Western District of Missouri, Western Division.

No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY
vs.
HERBERT S. HADLEY, Attorney General, and Others.

No. 2989.

THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
vs.
JOSEPH P. RICE and Others.

No. 2990.

THE ST. LOUIS SOUTH WESTERN RAILWAY COMPANY
vs.
JOSEPH P. RICE and Others.

No. 2991.

THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY
vs.
JOHN A. KNOTT and Others.

No. 2992.

THE ST. LOUIS, KANSAS CITY & COLORADO RAILROAD CO.
VS.
JOHN A. KNOTT and Others.

No. 2993.

THE KANSAS CITY SOUTHERN RAILWAY COMPANY
VS.
JOHN A. KNOTT and Others.

No. 2994.

THE ST. LOUIS & HANNIBAL RAILWAY COMPANY
VS.
JOHN A. KNOTT and Others.

No. 2995.

THE MISSOURI PACIFIC RAILWAY COMPANY
VS.
JOHN A. KNOTT and Others.

No. 2996.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY CO.
VS.
JOHN A. KNOTT and Others.

238 No. 2997.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY
VS.
JOHN A. KNOTT and Others.

No. 2998.

CHICAGO, BURLINGTON & QUINCY RAILWAY COMPANY
VS.
JOHN A. KNOTT and Others.

No. 2999.

QUINCY, OMAHA & KANSAS CITY RAILWAY COMPANY
VS.
JOHN A. KNOTT and Others.

No. 3000.

THE WABASH RAILWAY COMPANY
VS.
JOHN A. KNOTT and Others.

No. 3001.

THE ST. JOSEPH & GRAND ISLAND RAILWAY COMPANY
vs.
JOHN A. KNOTT and Others.

No. 3002.

KANSAS CITY, CLINTON & SPRINGFIELD RAILWAY COMPANY
vs.
JOHN A. KNOTT and Others.

No. 3003.

CHICAGO GREAT WESTERN RAILWAY COMPANY
vs.
JOHN A. KNOTT and Others.

No. 3004.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY
vs.
JOHN A. KNOTT and Others.

No. 3006.

THE CHICAGO & ALTON RAILWAY COMPANY
vs.
JOHN A. KNOTT and Others.

Certificate.

Heretofore this court by order made on the 5th day of March, 1906, referred each and all of the foregoing eighteen cases to F. L. Schofield, a Special Master, to take the evidence and report the same to this court, with certain findings, as will appear from the order now of record.

Later on the said Schofield proceeded with said hearing
239 and took certain evidence, much of it being oral testimony taken down by stenographers and duly transcribed, and other evidence being in the form of exhibits.

Later on this court by agreement of parties, to-wit, on the 13th day of June, 1908, made an order that the said cases should come on for trial October 5th, 1908, to the Court on the evidence thus taken by the said Special Master, Mr. Schofield, together with such other and further evidence as might be submitted by the respective parties.

October 5th, 1908, the hearing of said cases was upon the application of the defendants continued until the 9th day of November, 1908, at which time the hearing of said cases was proceeded with and continued *with* until and including November 14th, 1908, at

which time there was an adjournment of the hearing until December 14th, 1908, when the hearing was again resumed and proceeded with until the 30th day of December, 1908, when said hearing was concluded and each, all and every of the parties rested.

The said cases were heard and are to be determined only upon the evidence received by the court, consisting in part of the evidence taken before the Special Master, Mr. Schofield, and in part received by the court in open court, and there was no other or further evidence received by the court or offered by any party other than that hereinafter scheduled. And in the event of an appeal of any or all of the cases, the clerk will certify to said evidence, subject, however, to such rights as the parties may have under the laws and rules of the Appellate Court to designate what shall be certified up and what omitted.

The evidence so taken by the Special Master, returned and filed in open court, and offered in evidence as hereinbefore stated, is as follows:

Five volumes designated as in case No. 2998, marked Volumes I to V, both inclusive, and one volume designated, "2998, Chicago, Burlington & Quincy: Index and Exhibits." Also annual statements of the Chicago, Burlington & Quincy Railroad Com-
240 pany to the Railroad Commissioners for the years ending, respectively, June 30th, 1904, June 30th, 1905, June 30th, 1906, (three copies.)

Also four volumes returned designated as "2995: Missouri Pacific," marked respectively, volumes I to IV, inclusive, together with one volume marked "2995, Missouri Pacific Railway: Index and Exhibits." Also the tax return of the Missouri Pacific for June 1st, 1904, June 1st, 1905, the 26th Annual Report of the Missouri Pacific Railway, Exhibit 34, 36b, and 24, in case No. 2995. Also seven analytical sheets of the Missouri Pacific Railway upon form $1939, and seven analytical sheets of the Missouri Pacific Railway upon form #1941, and two analytical sheets of the Missouri Pacific Railway upon form #1940, in case No. 2995.

Also four volumes of testimony marked I to IV, inclusive, in case No. 3000, Wabash Railroad. Also one volume endorsed, "3000 Wabash Railroad: Index and Exhibits." Also exhibits marked in case No. 3000 and being designated "Exhibit 15," being the 15th and 17th Annual Report of the Directors of the Wabash Railroad Company for the years ending June 30th, 1904, and June 30th, 1906, respectively. Also the 15th and 16th Annual Report of the Directors of the Wabash Railroad Company for the years ending June 30th, 1904 and June 30th, 1905, respectively, each marked "Exhibit 16." Also the 16th and 17th Annual Reports of the Directors of the Wabash Railroad Company for the years ending respectively, June 30th, 1905 and June 30th, 1906, each marked "Exhibit 17."

Also one volume returned by the Special Master marked "2989, Atchison, Topeka & Santa Fe Proceedings," as showing certain proceedings had before him the said Special Master.

All the evidence offered before the said Special Master and re-

turned into court and used in these cases and all the proceedings had therein, are included in the papers thus specifically enumerated, each volume and document hereinafter referred to being now identified by the endorsement thereon of the Trial Judge, "Smith McPherson, Judge."

241 And pursuant to the order of the court and by agreement of parties the said cases came on for trial to the Court, November 9th, 1908, and said trial was continued from time to time with certain adjournments until December 30th, 1908, when the trial of all the cases was concluded and the said cases by the Court taken under advisement. The evidence taken before the court in open court is contained in volumes identified as follows:

Volume I, marked filed by the clerk, December 30th, 1908, and further identified by the signature of Smith McPherson, Trial Judge. Volume II, marked filed by the Clerk December 30th, 1908 and further identified by the signature of Smith McPherson, Trial Judge. Volume III, marked filed by the Clerk December 30th, 1908, and further identified by the signature of Smith McPherson, Trial Judge. Volume IV, marked filed by the Clerk December 30th, 1908, and further identified by the signature of Smith McPherson, Trial Judge. Volume V, marked filed by the Clerk December 30th, 1908, and further identified by the signature of Smith McPherson, Trial Judge, said Volume V being made up of exhibits, which together with the exhibits hereinafter scheduled, each and all being marked filed by the Clerk December 30th, 1908, and further identified by the signature of Smith McPherson, Trial Judge, are all the exhibitis offered in open court in the trial of said cases; the exhibits other than those in Volume V being as follows: Exhibits A, B, C, D, E, G, H, I, and Exhibits No. 54, 59, 7, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 4, and Exhibit "Douglas I".

And said cases hereinbefore entitled were heard and fully submitted to the Court on the evidence and the exhibits hereinbefore scheduled, and on no other evidence than that hereinbefore scheduled. And each, all and every of the parties before final submission after the introduction of the foregoing, by counsel in open court said no further evidence was desired or would be offered in the cases.

This certificate is now signed and ordered filed as of this date after the submission of the cases and all of them.

Done in open court this December 30th, 1908.

(Signed) SMITH McPHERSON, *Judge.*

242 Afterwards, to-wit, on the 30th day of December, 1908, the following order was filed and entered of record:

UNITED STATES OF AMERICA, *sct*:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. 2999.

QUINCY, OMAHA & KANSAS CITY RAILWAY COMPANY
vs.
JOHN A. KNOTT et al.

Also

RAILROAD COMPANIES
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Being Cases Numbered 2988, 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 3000, 3001, 3002, 3003, 3004, & 3006.

Now on this day again come the parties by their solicitors. Thereupon hearing of evidence is concluded, whereupon both parties rest, and this case is fully submitted and is by the Court taken under advisement and the orders and decree herein will be rendered and entered of record as of this date.

(Signed) SMITH McPHERSON, *Judge*.

December 30, 1908.

243 Afterwards, to-wit, on the 21st day of January, 1909, the following order was filed and entered of record:—

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY
vs.
HERBERT S. HADLEY, Attorney General and Others.

No. 2989.

THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
vs.
JOSEPH P. RICE and Others.

No. 2990.

THE ST. LOUIS SOUTH WESTERN RAILWAY COMPANY
vs.
JOSEPH P. RICE and Others.

No. 2991.

THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY CO.
vs.
JOHN A. KNOTT and Others.

No. 2992.

THE ST. LOUIS, KANSAS CITY & COLORADO RAILROAD CO.
vs.
JOHN A. KNOTT and Others.

No. 2993.

THE KANSAS CITY SOUTHERN RAILWAY COMPANY
vs.
JOHN A. KNOTT and Others.

No. 2994.

THE ST. LOUIS & HANNIBAL RAILWAY COMPANY
vs.
JOHN A. KNOTT and Others.

No. 2995.

THE MISSOURI PACIFIC RAILWAY COMPANY
vs.
JOHN A. KNOTT and Others.

No. 2996.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY CO.
vs.
JOHN A. KNOTT and Others.

244 No. 2997.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY
vs.
JOHN A. KNOTT and Others.

No. 2998.

CHICAGO, BURLINGTON & QUINCY RAILWAY COMPANY
vs.
JOHN A. KNOTT and Others.

No. 2999.

QUINCY, OMAHA & KANSAS CITY RAILWAY COMPANY
vs.
JOHN A. KNOTT and Others.

No. 3000.

THE WABASH RAILWAY COMPANY
VS.
JOHN A. KNOTT and Others.

3001.

THE ST. JOSEPH & GRAND ISLAND RAILWAY COMPANY
VS.
JOHN A. KNOTT and Others.

3002.

KANSAS CITY, CLINTON & SPRINGFIELD RAILWAY COMPANY
VS.
JOHN A. KNOTT and Others.

3003.

CHICAGO GREAT WESTERN RAILWAY COMPANY
VS.
JOHN A. KNOTT and Others.

No. 3004.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY
VS.
JOHN A. KNOTT and Others.

No. 3006.

THE CHICAGO & ALTON RAILWAY COMPANY
VS.
JOHN A. KNOTT and Others.

Order.

Each of the foregoing causes came on for hearing this January 20, 1909, the parties appeared by counsel, and admitted that the term of office of Herbert S. Hadley as Attorney General had expired, and Elliott W. Major was the duly qualified and acting successor
245 and Attorney General of Missouri. He appeared in person, and by the consent of himself and all counsel in the cases, it is ordered that without any formal pleadings, Elliott W. Major, as Attorney General of Missouri be and he is hereby substituted for and in the stead of Herbert S. Hadley, so that all pleadings against and on behalf of said Hadley shall apply to the substituted party as fully as if made against and for him.

(Signed) SMITH McPHERSON, *Judge.*

Afterwards, to-wit, on the 20th day of February, 1909, the following order was filed and entered of record, to-wit:—

In the Circuit Court of the United States, Western District of Missouri, Western Division.

No. 2988. Equity.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY
vs.
HERBERT S. HADLEY, et al.

And Equity Cases No. 2989, 2991, 2993, 2994, 2997, 2998, 3002, 3003.

Order.

Whereas, after the cases above numbered had been submitted and argued by agreement of all parties at the request of the Court James Peabody and F. P. Johnson, expert accountants for the railroad companies, and A. P. Taliaferro and T. A. Hamilton, expert accountants for the defendants, compiled statements showing the earnings, operating expenses, etc., for each of said railroad companies for periods of time as therein stated, and affixed a certificate to the effect that said statement in each case correctly shows the results on the various assumptions set forth therein, which said certificate was signed by all four of said expert accountants.

It is therefore ordered that each of said statements be filed and made of record herein.

Done in open court this February 20th, 1909.

(Signed) SMITH McPHERSON, *Judge.*

246 Afterwards, to-wit, on the 6th day of March, 1909, the following order was filed and entered of record, to-wit:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 2985.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY
vs.
HERBERT S. HADLEY et al.

And Also Numbers 2989 to 3004, Inclusive, and 3006.

Order.

By consent of parties, in accordance with agreements heretofore made and not recorded, it is on this March 6th, 1909, ordered:

1. The answers heretofore filed by the Attorney General and Railroad Commissioners, to which replications were filed, shall be treated and adopted by the other defendants who heretofore demurred herein, as their answers duly replied unto.

2. All the evidence taken before the Special Master and in open court, regardless of the particular case in which it was offered, shall be regarded as having been taken and offered in each of the cases tried.

(Signed) SMITH McPHERSON, *Judge.*

We consent to the above order.

FRANK HAGERMAN,
Solicitor for Complainants;
E. W. MAJOR, *Att'y General;*
SANFORD B. LADD,
JOHN KENNISH,
F. W. LEHMANN,
Solicitors for Appearing and Answering Defendants.

247 In the Circuit Court of the United States, Western District of Missouri, Western Division.

No. 2988. Equity.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY
vs.
HERBERT S. HADLEY et al.

And Equity Cases No. 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004, 3006.

Findings of Fact.

Prior to the argument the Court requested counsel on both sides to submit requests for findings of fact. Complainants' counsel did this. Defendants' counsel have not done so. Complainants' requests have been considered, some of which are embodied within the following findings, and some are not.

The following are the findings of fact that the Court makes as based upon the evidence herein:

1. The complainants are the eighteen railroad companies owning and operating lines of railroad in Missouri, they doing all of the state and interstate railroad business therein, and all of them except the St. Louis & Hannibal Company having lines of railroad both within and without the state. That company is wholly within the state, extending from Hannibal, Missouri, to the south 121.61 miles. The Kansas City, Clinton & Springfield Company is a road of about 160 miles in length with 151.01 miles in the state. All
248 the other companies have lines extending into a number of other states, one of them extending into thirteen other states

and territories. These roads with their own lines and with their connecting carriers, carry all the traffic and do all the business, freight and passenger, within the state, whether of state or interstate character. The intrastate business is at all times herein referred to as state business. That part of the interstate business which neither originates within, nor has its destination within, but passes across the State of Missouri, is called trans-state business.

2. The same roadbed, locomotives, cars, and trains including all facilities, are used for both classes of business, state and interstate. It is not practicable to conduct the business in any other way. This is so both from the standpoint of the public and that of the companies. If state business were to be carried alone upon some cars and trains, and interstate alone upon others, the expenses would be enormously increased, and almost if not quite prohibitive, while the public would be subjected to delays, inconveniences, and great expense. By reason of all this the business cannot practically be separated.

3. Both from a geographical and railway standpoint Missouri is situated differently from the other states of the Union, there only being two or three other states that have a resemblance to it in these particulars, and each of them in a lesser degree. This is so because the Mississippi is its boundary on the east all the distance. From a railroad standpoint the Missouri River is its boundary line on the west, although physically the Missouri River is only the western boundary line from the northwest corner of the state about half way to the southwest corner. But at the half way point, namely, Kansas City, the river turns directly to the east, and continues its way to the Mississippi River. In its production, business, and commerce all that part of Missouri to the north of the Missouri River is practically like the south half of Iowa, the country districts producing large quantities of live stock and grain for the market, as well as much bituminous coal. The south half of Missouri is entirely different. The amount of grain and live stock is much less than in the north half of the state. But the south half has a large amount of timber, stone, lime, lead, zinc, iron, and fruits. St. Louis on the east is a city of nearly a million people, Kansas City on the west nearly half as many, while St. Joseph has more than one hundred and twenty-five thousand people. These three cities carry on large manufacturing interests. The grain, live stock, and
249 packing house interests at Kansas City and St. Joseph are enormous. For a third of a century or more for reasons which need not be repeated, rates from the East were fixed to the Mississippi River, and later on, from thence to the Missouri River. The interstate rates either in or out were the one plus the other. It was the same from the West. It was likewise the same for the trans-state business going in either direction. Such is the method existing to-day. This brought about the fact which for years has existed and exists to-day, that the short line of road between the two rivers fixes the freight rates. To illustrate, the Burlington road is the short line between the rivers, being 198 miles from Hannibal to St. Joseph,

and the same distance, within a few miles, to Kansas City. The roads between Kansas City and St. Louis, and there are four at least of them, including the Burlington, is an average distance of nearly 300 miles, but some of the roads being fifty miles or more farther between the points than the others. This brings about the fact that all freight rates between any one point on the one river and any point on the other river are the same as the rate from Hannibal to St. Joseph over the Burlington line. That is to say, the freight rates on any road regardless of distance are the same between St. Louis and either Kansas City or St. Joseph that they are between Hannibal and St. Joseph over the Burlington line. This has given the three cities of St. Louis, Kansas City, and St. Joseph great advantages over other points. Competent persons say that to change this system will work irreparable harm to the three cities named, as well as to all other places within the state, by driving both the jobbing and manufacturing business to seaboard points. As to this no finding is made nor opinion expressed because it is believed to be a matter of policy upon which this Court in these cases should express no opinion. As to the passenger rates, by reason of competition the fare is the same between Kansas City and St. Louis, the shorter line fixing the rates, thereby compelling the longer road to be at much expense without remuneration. This is likewise true as to all competitive points.

As to the foregoing question of rates and fares, there is no United States statute governing the same, and there is no Missouri statute upon the subject except the two statutes questioned by the bills, one dealing with certain commodities per car per distance, and the other fixing the passenger fares at two cents. Aside from these two statutes, and as to any bearing they have as to charges between the two rivers, the conditions named have been brought about and
250 exist to-day by reason of a long time custom and by reason of transportation, actual and probable, upon the two rivers.

Still further bearing on the question are the following facts: Joplin is a city in the southwestern part of the state of more than twenty-five thousand people. There are a number of towns adjacent thereto, giving that county (Jasper) a population of 200,000 people. It is a very large mining district of lead and zinc. Between Kansas City and Joplin three of complainants herein have railroads. The Missouri Pacific at all points between the said places is within the state. Each of the other two between said points is partly without the state, starting within and going out and coming back, thereby making it interstate business as to two of the roads between Kansas City and the Joplin district. Between Kansas City and St. Joseph, four roads do the business. The Missouri Pacific and Chicago Great Western is each part of the distance within the State of Kansas, while the Burlington and St. Joseph & Grand Island Company is each wholly within the State of Missouri between the two cities. Between St. Joseph and St. Louis two of complainants do practically all the business, which is very large in both passenger and freight. These are the Burlington and Missouri Pacific. Between said cities

the Burlington line is wholly within the state. But the Missouri Pacific line is partly within the State of Kansas, crossing the Missouri River at Atchison and coming back into the state at Kansas City. On the foregoing facts the finding is that the short line between two competitive points necessarily fixes the rate, and the Missouri statutory rates under the statutes in question fix the rates between the cities named. But this is so solely because of the geographical location of cities and railroads, and competition, and long time custom. It is not so either because of a statute or any judicial determination by any of the Courts of Missouri.

4. Pending this litigation each of the complainant companies made and delivered to defendants statements showing the earnings and expenses for certain periods, which statements have been taken by both sides as sufficiently illustrative of the situation for the determination of these cases. The companies extended to the state officers, defendants herein, acting by experts by them selected, the opportunity to examine the statements and the books, papers, vouchers, and records of the companies. The freight rate statute of 1907 as to commodities mentioned allowed greater rates than did the statute of 1905 assailed by the original bills of complaint herein,
and it was conceded at the trial that if the rates fixed by the
251 Act of 1907 were confiscatory, that those fixed by the Act of 1905 were likewise.

5. The parties were producing evidence and preparing their evidence for about one year with the aid of experts on each side. These experts were all men of high character and great proficiency as railroad accountants. The experts on each side were given the fullest opportunity and all the time desired to obtain the information and put the same in form in exhibits, schedules and reports, all of which are in evidence in the cases, supplemented by the oral testimony of each of the experts with reference to all of these things.

6. It was conceded by the experts that the companies fairly, accurately and honestly kept their books showing the facts in these findings set forth. The experts of the state and of the companies have thereby been enabled to present with certainty and precision all the earnings within the state, both state and interstate business. But obtaining and compiling this information by the experts has been at great expense of time and money. One exception to the foregoing is to be noted as to passenger fares for a short period of time after the two cent fare law became operative. By agreement of both sides in open court in June, 1907, this Court issued a temporary writ of injunction against the enforcement of the freight rate statute. The complainants asked for a temporary injunction against the enforcement of the two cent passenger fare statute. This Court held that the statute should be given a trial for five months and ascertain the result by actual operation. In preparing the order counsel, no doubt by inadvertence, fixed three months as the period for trial as to results. But by acquiescence of both sides, or if not, by delays with which the Court was not chargeable, such status remained for more than one year, and the cases were not actually brought on for trial until in November, 1908. But after the statute

became operative in June, 1907, and this Court denied the temporary writ of injunction, the interstate passenger rates remained as they were for a period of about two months. During the time that condition prevailed parties both coming into and going out of Missouri on interstate journeys would buy tickets to the state line, thereby obtaining the benefit of the two cent fare for all distance within the state. It was not possible for the companies to show the truth as to the number of such trips, and therefore it is not possible for the Court to find just how much of the earnings were on account of such interstate trips. But the extent, whatever it was, would make an erroneous showing as to state earnings, though fav-
252 orable to defendants, because such earnings were of an interstate character. But even though for the short time a part of the business was thus carried on so that additional earnings were erroneously placed to the credit of the state, still the results are not changed, for the error was against, and not in favor of, complainants.

Freight earnings, both state and interstate, are made up from earnings of transportation and another item called "miscellaneous freight," composed of switching, demurrage, and storage charges, and track and equipment rentals. Passenger earnings are made up of passenger fares and miscellaneous, the latter covering mail, express, excess baggage, storage, rentals, and possibly some other terminal earnings.

No difference of consequence has arisen between the parties as to the expense of doing the entire business in the state. With reasonable certainty the expenses for doing the freight and passenger, including miscellaneous of each, can be and have been separated.

The earnings are known and fixed and in these findings stated to a certainty. But as to the expenses as between state and interstate business, there has been a controversy and such is the principal controversy in the cases. There is no known fixed or certain rule for determining how this separation of expenses shall be made. The same cannot be made with mathematical certainty. Complainants claim that the division should be made upon the revenue basis; defendants claim that it should be made upon the ton mile basis for freight, and passenger mile basis for passengers, classifying the miscellaneous earnings as and with freight and passenger earnings respectively. By the revenue basis is meant to assign such proportion of the total expense in the state on that class of business as the earnings of that class of state business bears to all the earnings state and interstate from the same class, or, which is the same thing, ascertain what the percentage of all expenses is of all earnings, then multiply that by the state earnings of any class, and thus obtain the sum to be assigned as state expense. The ton mile basis as to freight means the assignment as state freight expenses of any class of business such proportion of all state expense as the number of ton miles of state freight bears to the total ton miles of all freight hauled within the state. By the passenger mile basis is meant the assignment as state passenger expenses such proportion of all passenger expenses as the number of passengers in state business carried one mile bears
253 to the whole number of passengers state and interstate carried one mile.

For reasons stated in an opinion herein filed, the revenue basis has been and is adopted as the only logical basis to use in arriving at a correct conclusion. The one basis or the other as a whole must be adopted. Either side can make a better showing by adopting the one basis in part of the accounting, and the other basis for the other. Neither should be and is allowed to do this. As will presently appear, the state has attempted to do this in making its passenger earnings accountings.

7. Each basis for accounting has some defects, but they are minor and not controlling and do not change the result if the revenue basis is taken.

The expense of doing the state business over interstate is greater for carrying freight by at least fifty per cent., and at least twenty-five per cent. for carrying passengers. Therefore this extra cost must be added to the expenses after they have been ascertained so as to obtain the total expense. If the ton mile basis of division were adopted, the extra cost should also be added. This would require the use of another multiplier sufficient to bring the sum total of the state freight expense equal to that found herein, to actually represent the cost as shown by the evidence. Any apportionment of passenger expense upon the passenger mile basis would be unfair and unjust, although much more favorable to the companies than if made upon the revenue basis.

8. All things considered, the evidence shows the cost of doing the different classes of state business as between state and interstate apportioned upon the revenue basis with added extra cost brings a result in these findings stated, which is fair and representative and just. The Court finds, aside from the revenue basis, that the evidence shows the amount ascertained in each case as the expense and extra cost, is fair and justly represents the expense of doing each class of state business. The extra cost as to each complainant for doing the state business over interstate is more than fifty per cent. in case of freight, and more than twenty-five per cent. in case of passenger. This extra expense as thus found is considerably in excess of these figures and the figures used are adopted as the minimum. The sum total of this extra cost if ascertained according to the ton mile theory, would not be changed because it is a question of multiplication, and one multiplier or another must be used accordingly as the theory is adopted. The findings herein made on all the evidence represent in dollars the fair cost and expense fixed at a minimum. There has also been considered and found in each case such sum as would equal the diminution of earnings upon the commodities covered by the freight rate statutes of 1905 and 1907 if the rates thus fixed had been charged, as there would have been but for the temporary injunctions herein issued.

254

9. The evidence shows that each of complainants has regularly paid for many years interest on its bonds. There is no evidence to show that any of the railroad property within the State of Missouri has an undue amount of bonds or is unfairly bonded, and the evidence does not show that any of the bonds provide for interest in any sum greater than such bonds should carry. It does show that

most of the bonds are at the lowest rates of interest, and much less than the legal rate allowable in Missouri. In thus referring to interest, the St. Louis & Hannibal, and Kansas City, Clinton & Springfield companies are excepted.

10. After the adoption of the two cent fare statute, there was no substantial increase in travel. For a few weeks there was a small increase largely brought about by interstate passengers buying tickets to state lines, and in part by the novelty. What if any increase of travel occurred by reason of said two cent fare, would be a mere approximation. It has not been substantial, and there is no reason to believe that any such increase will be brought about in the future by a two cent fare.

11. The values of the railroad properties in the State of Missouri are found, in the cases tried, to be as follows:

	Miles.	Value.	Value per mile.
St. Louis & San Francisco.	1,688.89	$61,238,414.70	$36,259.00
Atchison, Topeka & Santa Fe	348.31	15,091,212.00	43,326.00
Chicago, Rock Island & Pacific	515.48	19,102,507.59	37,058.00
Kansas City Southern	174.48	8,039,084.40	46,075.00
St. Louis & Hannibal	120.61	1,143,077.02	9,477.00
Missouri, Kansas & Texas	506.21	20,894,229.93	41,276.00
Chicago, Burlington & Quincy	1,136.34	53,172,907.83	46,793.00
Kan. City, Clinton & Springfield	151.01	2,380,222.48	15,762.00
Chicago Great Western	84.43	3,605,236.38	42,701.00

With the exceptions hereinafter stated, the above valuations of the properties of said nine companies as fixed, are in fact practically the same as those fixed by the state assessing board for the purpose of taxation. But aside and apart from the valuations thus fixed by the state board, these findings are that upon the whole evidence said properties are at least of the values above fixed. The evidence
255 shows that included in such sums the state board after making certain valuations under the heading of "all other property" fixed certain valuations, which when added give the totals as above. In argument it was contended that "all other property" included franchise values. This is not deemed important because it is difficult to see wherein steam railroad property like those involved, can have a franchise value. But waiving that, any franchise value that the state board could have considered, was necessarily so small a per cent. of the total valuations fixed by the state board as to make no appreciable difference in the result of these cases, because if altogether admitted the remaining value is such that no road could obtain a return to which it is herein found to be entitled. But if the property has a franchise value for taxation, it also has such valuation as an earning power, or, rather, upon which returns should be made. In fixing the valuations above set forth there have been con-

sidered the immense terminal values of most of the roads, the amount of stock and bonds outstanding, what it would cost to duplicate the properties both with and without terminals in the large cities, and all the evidence bearing on present values, and in fixing said valuations the sums found are the minimum valuations, the properties being worth at least the sums thus fixed.

The foregoing valuations are the same as fixed by the state assessing boards except as to the property of the St. Louis & Hannibal and of the Kansas City, Clinton & Springfield in the state, which are found to be worth sixty-six and two-thirds per cent. of the valuations of the state boards.

12. The interest obligations except as already stated are just and reasonable and should be paid in full with some dividends to the stockholders in addition. However, and entirely aside from the question of interest, the rates and earnings should in any event be such as to produce a fair return upon the valuations hereinbefore fixed.

And such earnings should be on the property within the state as would be equivalent to six per centum per annum, that per cent. being a fair return upon such valuations.

13. About the same time the two cent fare statute became operative, passes and other forms of reduced and free transportation, were abolished. Since that time they have not been given nor used except in cases of employés actually employed. The passen-
256 ger earnings were thereby increased, but such increase was not more than approximately one per cent.

14. After the arguments were concluded at the request of the Court, and with the consent of the parties, two experts upon each side, two selected by the railways and two by the defendants, worked with the Court for something more than one week. These experts were the same gentlemen representing their respective sides who had done much of the work in preparing the cases for the respective sides for hearing. The Court requested these experts to take the numerous tables and tabulate them already in evidence and to confine themselves wholly to that which had been introduced in evidence in the cases, and to make therefrom a new table for each of the nine cases showing the earnings and the expenses chargeable to each class of earnings according to the respective theories covered by counsel in the arguments. The Court further requested said four experts after preparing said new tables that if they agreed, to affix their signatures thereto. This they did below a certificate reciting that the statement of earnings, operating expenses, etc., as to each particular road for the time therein given, correctly shows the results on the various assumptions set forth therein. Said nine statements were by order of this Court, February 20, 1909, ordered filed and made of record in the cases. The said nine statements are now and here referred to, and are made part hereof. Each of said nine statements is found by the Court to be correct upon the respective theories presented. But the theory entitled as the "state's basis" is rejected for the reason that said statement improperly divides miscellaneous earnings, placing an undue proportion to

the benefit of the state. And said basis improperly makes a division of expense upon the ton mile and passenger mile basis and does not allow a sufficient amount as extra cost of doing state business, and the same does not allow enough for the value of the property in that it deducts all sums included "all other property" multiplied by three.

If the companies had been permitted to charge the amounts per passenger per mile which they did charge and receive prior to the two cent passenger fare statute, they would have received in addition to that which they did receive by reason of the statute and by reason of the temporary injunction being denied for earnings within the state for a period of twelve months last preceding the submission of the cases, the following sums; (Interstate, however, not controlled by statute, but by changed conditions.)

257

Name of road.	State passengers.	Interstate passengers.
St. L. & S. F. R. R.	$666,008.72	$509,730.63
A. T. & S. F. R. R.	30,885.52	66,271.03
C. R. I. & P. Ry. and St. L. K. C. & C. Ry.	124,469.14	111,178.60
K. C. So. Ry.	7,044.49	27,260.75
St. L. & H. Ry.	37,275.38	145.23
M. K. & T. Ry.	140,593.46	63,815.12
K. C. C. & S. Ry.	14,654.57	10,846.91
C. B. & Q. R. R.	394,878.77	261,556.41
C. G. W. Ry.	49,459.47	34,621.62

In the case of the St. Louis & San Francisco there were included in expenses sums paid as rentals under a lease given by the Kansas City, Fort Scott & Memphis Railway Company whose common stock is owned by it which operates the company under a lease requiring it to pay to the holders of preferred stock of the Fort Scott & Memphis Company, as a rental, a sum equal to four per cent annual dividends. This lease has been in force several years and is a fair one, and such rental has been treated as an operating expense, and is not included in fixed charges. And the court finds that it is an operating expense. But even if it were a fixed charge, it is not material as the result would not be changed even though the rentals were carried into the fixed charge account. This is so because the amounts carried into state freight expense is only $8,428.56 and interstate passenger expense, $7,443.68.

15. In the statements hereinbefore referred to made and signed by the four experts, while they correctly set forth the figures on both the revenue theory and the ton and passenger mile theory the placing of the miscellaneous earnings of the passenger business is arbitrarily fixed and does not at all proceed upon the passenger mile basis, but for that the revenue basis is taken and fixed. Such earnings are arbitrarily divided without reference to the facts, the result being the state earnings and especially passenger, are fixed much higher than the actual earnings. Said division instead of following

defendants' theory of the ton mile and passenger mile basis, is upon the revenue basis from which it is seen that this would be a splitting of theories. But from this and from all the evidence it is plain that even the ton and passenger mile basis theory cannot be worked out without showing a loss, to prevent which an arbitrary change of account must be made as to the miscellaneous business. Even in making this arbitrary change the revenue basis is used, and yet the revenue division of expenses insisted upon by complainants is said
258 not to be recognized. This is utterly illogical and unfair, and does not represent the true facts as to whether such earnings are made at a loss, and there is no reliance whatever to be placed in such method of accounting. In so finding no reflection whatever is made upon the experts for the state, because as before found they are men of the highest character and learning and highly skilled in accounting and with a proper basis for such accounting their work is perfect. And from their own statements upon the basis adopted herein for making such accounting by the Court, the freight business for the period mentioned would have been done at a loss if the statutory rates had been observed, and the passenger business was done at a loss under the two cent fare statute.

16. As to each of the nine companies whose cases have been submitted, the earnings and expenses and all other items are different in amount. So with the returns upon value to which the company is entitled. But in no event in any of the cases tried would the freight earnings, after making the deductions herein found result in a return to any company of more than three per cent. With nearly every company an actual deficit is shown if the 1907 statute had been in force. So under the two cent fare statute a deficit as to nearly all of the companies, and not more than two per cent. in case of any company. If the freight and passenger business should be combined with the miscellaneous of each class, there would be a deficit as to some and not to exceed three per cent. as to any of the others. In arriving at these conclusions and in adopting the tabulations herein set forth an account has been taken of all earnings, state and interstate, freight and passenger, and miscellaneous; the proportion which state and interstate freight and passenger exclusive of miscellaneous bear to all state and interstate, miscellaneous included, and that which they bear to all the earnings of the state; of miscellaneous freight and miscellaneous passenger earnings, undivided as between state and interstate, with the proportion they are of all earnings, freight and passenger; of all expenses divided as between all kinds of freight and passenger business, including miscellaneous, but not divided as between state and interstate; of the deductions to be made from all state freights not including miscellaneous of such proportion of expenses of all freight and passenger respectively as the freight and passenger earnings exclusive of miscellaneous bear to all earnings; of the deduction of the extra cost; of the diminution of freight earnings if the freight rate statute had been observed; of the
259 value of that portion of the property assignable to the particular traffic. This value is found by taking for each class

of business of the entire value of the property in the state, such proportion as the earnings on that portion of the business bear to all the earnings in the state. A statement so made as to each of the companies whose cases have been submitted is as follows:

17. The periods taken are representative taken by the experts upon both sides, and were for the months set forth in the column headed "time." These tables do not follow the form taken by the experts in preparing exhibits to be introduced in evidence, nor do they follow the prepared form adopted by the four experts in making the nine statements hereinbefore referred to. An attempt has been made to abbreviate, but with the results the same as adopted by the experts. These are found to be correct as now to be set forth, and are adopted by the Court. If any error has crept into them, the Court will make proper correction upon his attention being called thereto after these findings have been filed, which can be readily done upon motion or suggestion. The tables adopted by the court now follow:

Interstate Freight.

Company.	Time Mo.	Amount.	% of all freight.	% of all earnings.
St. L. & S. F. R. R....	3	$2,214,002.82	76.94	54.68
A. T. & S. F. R. R....	6	1,872,915.00	90.05	67.72
C. R. I. & P. Ry.....	3	665,228.16	79.38	59.86
K. C. So. Ry.....	6	702,249.91	79.35	67.11
St. L. & H. Ry.....	12	51,735.05	36.25	24.61
M. K. & T. Ry.....	6	1,333,455.26	81.73	57.89
C. B. & Q. R. R.....	12	6,454,699.87	78.75	52.40
K. C. C. & S. Ry.....	12	116,893.60	68.27	41.04
C. G. W. Ry.....	6	224,169.58	86.02	57.39

State Freight.

Company.	Amount.	% of all freight.	% of all earnings.
St. L. & S. F. R. R.....	$577,192.84	20.04	14.26
A. T. & S. F. R. R.....	141,133.00	6.79	5.10
C. R. I. & P. Ry.....	150,953.68	18.02	13.58
K. C. So. Ry.....	38,748.76	4.38	3.70
St. L. & H. Ry.....	87,941.99	61.62	41.84
M. K. & T. R. R.....	277,416.52	17.01	12.04
C. B. & Q. R. R.....	1,580,529.64	19.28	12.83
K. C. C. & S. Ry.....	45,003.15	26.29	15.80
C. G. W. Ry.....	29,129.36	11.18	7.45

260 *Miscellaneous Freight.*

Company.	Amount.	% of all freight.	% of all earnings.
St. L. & S. F. R. R.	$86,814.57	3.02	2.14
A. T. & S. F. R. R.	65,833.56	3.16	2.38
C. R. I. & P. Ry.	21,815.70	2.60	1.96
K. C. So. Ry.	144,046.62	16.27	13.77
St. L. & H. Ry.	3,044.11	2.13	1.45
M. K. & T. Ry.	20,603.37	1.26	0.89
C. B. & Q. Ry.	161,579.41	1.97	1.31
K. C. C. & S. Ry.	9,319.58	5.44	3.27
C. G. W. Ry.	7,280.24	2.80	1.86

Interstate Passenger.

Company.	Amount	% of all passenger.	% of all earnings.
St. L. & S. F. R. R.	$368,687.43	31.49	9.11
A. T. & S. F. R. R.	355,318.12	51.81	12.85
C. R. I. & P. Ry.	113,524.21	41.53	10.22
K. C. So. Ry.	89,504.58	55.47	8.55
St. L. & H. Ry.	198.19	0.29	0.09
M. K. & T. R. R.	303,214.54	45.12	13.16
C. B. & Q. Ry.	1,777,788.27	43.15	14.43
K. C. C. & S. Ry.	41,146.00	36.22	14.45
C. G. W. Ry.	72,360.87	55.62	18.53

State Passenger.

Company.	Amount.	% of all passenger	% of all earnings
St. L. & S. F. R. R.	$599,051.59	51.17	14.79
A. T. & S. F. R. R.	104,370.19	15.22	3.77
C. R. I. & P. Ry.	114,853.04	42.02	10.33
K. C. So. Ry.	31,865.28	19.75	3.05
St. L. & H. Ry.	52,667.38	78.04	25.05
M. K. & T. R. R.	246,368.53	36.66	10.70
C. B. & Q. R. R.	1,611,702.92	39.11	13.09
K. C. C. & S. Ry.	47,646.80	41.95	16.73
C. G. W. Ry.	38,105.03	29.28	9.75

Miscellaneous Passenger.

Company.	Amount.	% of all passenger	% of all earnings
St. L. & S. F. R. R.	$203,077.28	17.34	5.02
A. T. & S. F. R. R.	226,080.00	32.97	8.18
C. R. I. & P. Ry.	44,980.08	16.45	4.05
K. C. So. Ry.	39,973.54	24.78	3.82
St. L. & H. Ry.	14,619.99	21.67	6.96
M. K. & T. Ry.	122,458.22	18.22	5.32
C. B. & Q. R. R.	731,021.89	17.74	5.94
K. C. C. & S. Ry.	24,797.39	21.83	8.71
C. G. W. Ry.	19,643.99	15.10	5.02

261 18. All Freight and Passenger Expenses, including miscellaneous, less taxes and rentals, and percentages to earnings, undivided as between State and Interstate.

Company.	Freight.	Passenger.	Taxes and rentals, freight.	Taxes and rentals, passengers.
St. L. & S. F. R.	1,802,813.26	974,816.61	112,452.04	38,979.63
A. T. & S. F.	1,382,738.65	572,167.20	32,361.50	10,854.04
C. R. I. & P.	619,199.73	317,633.62	74,227.43	21,015.44
K. C. So.	571,297.54	141,432.56	22,331.70	3,737.37
St. L. & H.	117,908.81	68,343.04	5,994.07	2,273.61
M. K. & T.	1,010,643.65	516,589.98	119,017.87	58,465.49
C. B. & Q.	6,793,610.60	3,527,311.81	12,235.30cr.	6,152.58cr.
K. C. C. & S.	98,988.29	138,384.77	9,182.36	5,749.38
C. G. W.	198,887.69	126,355.88	12,294.18	11,312.16

Company.	% of said expenses to earnings exclusive of taxes and rentals.		Same, including taxes and rentals.	
	Freight.	Passenger.	Freight.	Passenger.
St. L. & S. F. R. R...	62.64	83.26	3.91	3.33
A. T. & S. F. R. R....	66.48	83.43	1.55	1.58
C. R. I. & P. Ry.....	73.89	116.20	8.86	7.68
K. C. So. Ry.....	64.55	87.66	2.52	2.31
St. L. & H. Ry.....	82.61	101.27	4.19	3.37
M. K. & T. Ry.....	61.95	76.87	7.29	8.69
C. B. & Q. Ry.....	82.88	85.60	0.00	0.00
K. C. C. & S. Ry.....	57.81	121.83	5.36	5.06
C. G. W. Ry.....	76.33	97.11	4.71	8.68

The time of the foregoing tables is the same as in first table above.

19. The following nine tables show the state earnings and expenses, valuation, return on value, and interest charge of the said nine roads respectively whose cases have been submitted. The other cases are to be covered by decrees by agreement the same as certain decrees of the nine cases, all of which is of record.

262 St. Louis & San Francisco Railroad Company.

Period, Three Months.

State earnings and expenses.	Freight.		Passenger.	
State earnings	577,192.84		599,051.59	
State expenses	361,644.33		498,716.20	
Leaving.....	215,548.51		100,335.39	
Less taxes and rentals...	22,760.29		20,097.90	
Leaving.....	192,788.22		80,237.49	
Extra cost of doing state business, freight 50%, passenger 25%	131,425.08		53,907.36	
Leaving.....	61,363.14		26,330.13	
Diminution in earnings if the state rates in question had been charged.	11,389.27			
Leaving.....	49,973.87		26,330.13	
Valuation	.....	14.26%	.....	14.79%
Assignable proportion of value for representative period, and 6% interest thereon, is	130,988.97		135,857.42	

Return on value:				
(*a*) Actual return upon the assignable value found in subdivision above, the amount shown in first subdivision above is	.....	2.29%	.....	1.16%
(*b*) Same without allowance for extra cost.	.....	8.2%	.....	3.5%
Interest charge:				
Actual interest charge paid on assignable properties	116,792.45		121,133.27	

263 Atchison, Topeka & Santa Fe Railway Company.

Period, Six months.

State earnings and expenses.	Freight.		Passenger.	
State earnings	141,133.00		104,370.19	
State expenses	92,581.89		87,834.09	
Leaving.....	48,551.11		16,536.10	
Less taxes and rentals...	3,503.41		901.74	
Leaving.....	45,047.70		15,634.36	
Extra cost of doing state business, freight 50%, passenger 25%	41,859.55		17,947.71	
Leaving.....	3,188.15		2,313.35	(red ink) (deficit)
Diminution in earnings if the state rates in question had been charged.....	13,885.87		.....	
Leaving.....	10,697.72	(red ink) (deficit)	2,313.35	(red ink) (deficit)
Valuation:				
Assignable proportion of value for representative period, and 6% interest thereon	23,089.35	5.10%	17,068.16	3.77%

Return on value:				
(a) Actual return upon the assignable value found in subdivision above, the amount shown in first subdivision above is	.....	nothing	.....	nothing
(b) Same without allowance for extra cost.	.....	8.%	.....	5.49%
Interest charge:				
Actual interest charge paid on assignable properties	17,934.56		13,257.51	

264 The Chicago, Rock Island & Pacific Railway Company.

Period, Three Months.

State earnings and expenses.	Freight.		Passenger.	
State earnings	150,953.68		114,853.04	
State expenses	111,579.80		133,469.65	
Leaving.....	39,373.88		18,616.61	(red ink) (deficit)
Less taxes and rentals...	13,375.78		8,830.68	
Leaving.....	25,998.10		27,447.29	(red ink) (deficit)
Extra cost of doing state business, freight 50%, passenger 25%	41,919.82		17,501.61	
Leaving.....	15,921.72	(red ink) (deficit)	44,948.90	(red ink) (deficit)
Diminution in earnings if the state rates in question had been charged.	9,989.43		.....	
Leaving.....	25,911.15	(red ink) (deficit)	44,948.90	(red ink) (deficit)
Valuation:				
Assignable proportion of value for representative period, and 6% interest thereon	38,911.81	13.58%	29,599.34	10.33%

Return on value:				
(a) Actual return upon the assignable value found in subdivision above, the amount shown in first subdivision above is	..... nothing		..... nothing	
(b) Same without allowance for extra cost.	..... 2.47%		..... nothing	
Interest charge:				
Actual interest charge paid on assignable properties	24,907.02		18,946.21	

265 The Kansas City Southern Railway Company.

Period, Six Months.

State earnings and expenses.	Freight.		Passenger.	
State earnings	38,748.76		31,865.28	
State expenses	25,022.83		27,932.93	
Leaving.....	13,725.93		3,932.35	
Less taxes and rentals...	978.13		738.13	
Leaving.....	12,747.80		3,194.22	
Extra cost of doing state business, freight 50%, passenger 25%	11,711.60		5,346.15	
Leaving.....	1,036.20		2,151.95	(red ink) (deficit)
Diminution in earnings if the state rates in question had been charged.	2,957.58		.....	
Leaving.....	1,921.38	(red ink) (deficit)	2,151.93	(red ink) (deficit)
Valuation:				
Assignable proportion of value for representative period, and 6% interest thereon	8,923.38	3.70%	7,355.76	3.05%

Return on value:				
(*a*) Actual return upon the assignable value found in subdivision above, the amount shown in first subdivision above is.....	.....	nothing	.....	nothing
(*b*) Same without allowance for extra cost.	.....6.58%		.....	2.6%
Interest charge:				
Actual interest charge paid on assignable properties	5,295.38		4,365.11	

266 The St. Louis & Hannibal Railway Company.

Period, Twelve Months.

State earnings and expenses.	Freight.		Passenger.	
State earnings	87,941.99		52,667.38	
State expenses	72,655.40		53,334.91	
Leaving.....	15,286.59		667.53	(red ink) (deficit)
Less taxes and rentals...	3,693.55		1,774.32	
Leaving.....	11,593.04		2,441.85	(red ink) (deficit)
Extra cost of doing state business, freight 50%, passenger 25%	12,026.69		2,444.68	
Leaving.....	433.65	(red ink) (deficit)	4,886.53	(red ink) (deficit)
Diminution in earnings if the state rates in question had been charged.	15,126.02		.....	
Leaving.....	15,559.67	(red ink) (deficit)	4,886.53	(red ink) (deficit)
Valuation:				
Assignable proportion of value for representative period, and 6% interest thereon	28,694.05	41.84%	17,179.40	25.05%

Return on value:				
(a) Actual return upon the assignable value found in subdivision above, the amount shown in the first subdivision above is	..... nothing		..... nothing	
(b) Same without allowance for extra cost.	..... nothing		..... nothing	
Interest charge:				
Actual interest charge paid on assignable property	16,359.44		9,794.55	

267 Missouri, Kansas & Texas Railway Company.

Period, Six Months.

State earnings and expenses.	Freight.		Passenger.	
State earnings.....	277,416.52		246,368.53	
State expenses.....	171,910.48		189,381.89	
Leaving.....	105,506.04		56,986.64	
Less taxes and rentals...	20,244.94		21,433.45	
Leaving.....	85,261.10		35,553.19	
Extra cost of doing state business, freight 50%, passenger 25%.....	66,696.09		27,482.59	
Leaving.....	19,165.01		8,070.60	
Diminution in earnings if the state rates in question had been charged.	20,222.85		.....	
Leaving.....	1,057.89	(red ink) (deficit)	8,070.60	
Valuation:				
Assignable proportion of value for representative period, and 6% interest thereon	75,469.96	13.04%	67,070.48	10.70%

Return on value:				
(*a*) Actual return upon the assignable value found in subdivision above, the amount shown in first subdivision above is	.....	nothing	.....	0.72%
(*b*) Same without allowance for extra cost.	.....	5.18%	.....	3.18%
Interest charge:				
Actual interest charge paid on assignable property	62,439.68		55,490.41	

268 Chicago, Burlington & Quincy Railroad Company.

Period, Twelve Months.

State earnings and expenses.	Freight.		Passenger.	
State earnings	1,580,529.64		1,611,702.92	
State expenses	1,324,453.83		1,489,746.71	
Leaving.....	256,075.81		121,956.21	
Less taxes and rentals..	2,487.99	cr.	2,798.50	cr.
Leaving.....	258,563.80		124,754.71	
Extra cost of doing state business, freight 50%, passenger 25%	484,129.29		158,205.70	
Leaving.....	225,565.49	(red ink) (deficit)	33,450.99	(red ink) (deficit)
Diminution in earnings if the state rates in question had been charged	112,533.71		.....	
Leaving.....	338,099.20	(red ink) (deficit)	33,450.99	(red ink) (deficit)
Valuation:				
Assignable proportion of value for representative period, and 6% interest thereon	409,325.04	12.83%	417,620.02	13.09%

Return on value:				
(a) Actual return upon the assignable value found in subdivision above, the amount shown in the first subdivision above is	..... nothing		..... nothing	
(b) Same without allowance for extra cost.	..... 2.11%		..... 1.79%	
Interest charge:				
Actual interest charge paid on assignable property	132,735.02		135,424.89	

269 Kansas City, Clinton & Springfield Railroad Company.

For Period of Twelve Months.

State earnings and expenses.	Freight.		Passenger.	
State earnings	45,003.15		47,646.80	
State expenses	26,024.02		58,052.41	
Leaving.....	18,979.13		10,405.61	(red ink) (deficit)
Less taxes and rentals...	2,414.04		2,411.86	
Leaving.....	16,565.09		12,817.47	(red ink) (deficit)
Extra cost of doing state business, freight 50%, passenger 25%	8,483.30		7,625.00	
Leaving.....	8,081.79		20,442.47	(red ink) (deficit)
Diminution in earnings if the state rates in question had been charged.	2,970.21		.....	
Leaving.....	5,111.58		20,442.47	(red ink) (deficit)
Valuation:				
Assignable proportion of value for representative period, and 6% interest thereon	22,564.51	15.80%	23,892.67	16.73%

Return on value:				
(*a*) Actual return upon the assignable value found in subdivision above, the amount shown in the first subdivision above is	.....	1.36%	.....	nothing
(*b*) Same without allowance for extra cost.	.....	3.61%	.....	nothing
Interest charge:				
Actual interest charge paid on assignable property	23,881.78		25,288.48	

270 Chicago, Great Western Railway Company.

Period, Six Months.

State earnings and expenses.	Freight.		Passenger.	
State earnings	29,129.36		38,105.03	
State expenses	22,235.64		36,996.98	
Leaving.....	6,893.72		1,108.05	
Less taxes and rentals...	1,374.49		3,312.25	
Leaving.....	5,519.23		2,204.20	(red ink) (deficit)
Extra cost of doing state business, freight 50%, passenger 25%	9,347.72		6,090.35	
Leaving.....	3,828.49	(red ink) (deficit)	8,294.55	(red ink) (deficit)
Diminution in earnings if the state rates in question had been charged.	1,893.41		.....	
Leaving.....	5,721.90	(red ink) (deficit)	8,294.55	(red ink) (deficit)
Valuation:				
Assignable proportion of value for representative period, and 6% interest thereon	8,057.70	7.45%	10,545.32	9.75%

Return on value:		
(a) Actual return upon the assignable value found in subdivision above, the amount shown in the first subdivision above is	..... nothing	..... nothing
(b) Same without allowance for extra cost,	..... 2.69%	..... nothing
Interest charge:		
Actual interest charge paid on assignable property	7,164.08	9,375.81

271 Afterwards, to-wit, on the 8th day of March, A. D. 1908, a findings of fact was filed.

Said findings of fact is in words and figures as follows:

20. The Court believes that the foregoing findings are all that are material and all that are necessary to make. However, if any party believes that any material finding of fact has been omitted, upon application of such party the same will be considered and made if deemed advisable. And likewise if any of the foregoing computations or figures have been erroneously made. But such application to be entertained must be made within thirty days from this date.

And each, all and every of the foregoing are made as the findings of the Court, and are now and here in open court this March 8th, 1909, ordered filed and made of record in said cases and all of them.

(Signed) SMITH McPHERSON, *Judge.*

272 Afterwards, to-wit, on the 22nd day of March, A. D. 1909, the same being a day of the regular November term of said court, a final decree was made and entered of record.

Said final decree is in words and figures as follows:

273 In the Circuit Court of the United States, Western District of Missouri, at Kansas City.

No. 2999. Equity.

THE QUINCY, OMAHA & KANSAS CITY RAILROAD COMPANY, Complainant,

vs.

JOHN A. KNOTT, JOSEPH P. RICE, and FRANK A. WIGHTMAN, Railroad Commissioners of the State of Missouri; Herbert S. Hadley, Attorney General of the State of Missouri; Charles M. Daily, William F. Davis, and James F. Robb; H. R. Oglesby, Railroad Commissioner of the State of Missouri; Joseph M. Patterson, Charles E. Moss and George Dodd, County Judges, and Arthur C. Warner, County Treasurer; F. M. Riley, R. E. Scearce and H. B. McIntyre; and Elliott W. Major, Attorney General of the State of Missouri, Respondents.

Final Decree.

The above entitled case this March 8th, 1909, comes on for final decree upon the evidence and stipulations upon file and of record herein, the cases having heretofore been fully argued and fully submitted and taken under advisement. And now at this time the Court being fully advised in the premises, the parties appearing by their respective counsel, for reasons stated in an opinion by the Trial Judge and findings of fact signed and filed herein, orders, adjudges and decrees:

1. The maximum freight rate laws of Missouri, of 1905 and 1907, and the passenger rate law of 1907, mentioned in paragraph 2 hereof, and set forth in the original bill and amendments and supplements thereto, are unreasonable and confiscatory; do not afford the complainant any fair or reasonable return upon the value of its property, and to comply therewith would take the property of complainant without due process of law. None of the provisions thereof should or can be rightfully enforced against complainant, its officers, agents or employés. A finding of fact has been prepared and filed, and is hereby referred to as if made part hereof.

2. Defendants Elliott W. Major, Attorney General of the State of Missouri, John A. Knott, H. R. Oglesby, and Frank A. Wight-
274 man, Railroad Commissioners of the State of Missouri, and each of them, their agents, employés and successors, are hereby enjoined from enforcing, or attempting, directly or indirectly, by suit or in any other manner whatsoever, to enforce against complainant, its officers, agents, employés or servants, any of the provisions of, or penalties provided for in the following acts of the legislature of the State of Missouri.

First, an act approved April 14, 1905, entitled:

"An act to amend article IV, chapter 12 of the Revised Statutes of Missouri of 1899, entitled 'Railroad classification, charges, com-

missioners,' by adding a new section thereto, to be known as section 1195*a*."

Second, an act approved April 15, 1905, entitled:

"An act entitled 'An act to amend chapter 12 of the Revised Statutes of Missouri, Revision of 1899, entitled "Corporations, private," by repealing section 1194 of said Revised Statutes, being part of article IV of said chapter concerning railroad classification, charges, commissioners, and to enact in lieu thereof the following new sections providing for the regulation of freight charges by railroads and the recovery of penalties for the violation thereof.'"

Third, an act approved February 27, 1907, entitled:

"An act to repeal sections 1191 and 1192 of chapter 12, article 4 Revised Statutes of Missouri, 1899, entitled 'Railroad classification, charges, commissioners,' by striking out sections 1191 and 1192 and enacting the following new sections in lieu thereof to be known as sections 1191 and 1192 and 1192*a*."

Fourth, an act approved March 19, 1907, entitled:

"An act to repeal an act of the 43rd general assembly, approved April 15, 1905, entitled 'An act to amend chapter 12 of the Revised Statutes of Missouri, revision of 1899, entitled "Corporations, private," by repealing section 1194 of said Revised Statutes, being part of article IV of said chapter, concerning railroad classification, charges, commissioners, and to enact in lieu thereof the following new sections providing for the regulation of freight charges by railroads and the recovery of penalties for the violation thereof; and to repeal an act of the 43rd general assembly, approved April 14, 1905, entitled 'An Act to amend article IV, chapter 12, of the Revised Statutes of Missouri, 1899, entitled "Railroad classification, charges, commissioners," by adding a new section thereto, to be known as section 1195*a*, fixing the charges for carrying undressed stone, crushed rock and building or paving brick,' and to enact in lieu thereof certain new sections, to be known as sections 1194, 1194*a*-1, 1194*b*-1 and 1194*c*-1, providing for the regulation of freight charges by railroads and prescribing the punishment for a violation thereof, which new sections shall read as follows:"

Fifth, an act approved March 19, 1907, entitled:

"An Act to amend article 4, chapter 12, Revised Statutes of Missouri of 1899 by adding a new section thereto, to be known as section 1195*a*, and relating to freight charges and classifications."

275 3. The other defendants who are officers, and their successors, are likewise enjoined from enforcing or attempting to enforce any of said statutory enactments.

4. There is no evidence that either defendants Daily, Davis Robb, Riley, Scearce, or McIntyre, has threatened or intended to institute any action or proceeding against complainant as averred in the bill of complaint, and the said bill of complaint and the amendments and supplement is upon that ground as to said defendants in this paragraph named, dismissed. If however, at any future time said defendants or either of them in this paragraph named, should take any action, or threaten or attempt to take any action under either or all of said statutes hereinbefore designated, then and in that

case the complaint herein may apply to this Court by supplemental bill or otherwise as it may be advised for further orders in that behalf.

5. It is further ordered, adjudged and decreed that the defendants, or any of the-, when the circumstances have changed so that the rates fixed as aforesaid shall yield to complainant reasonable compensation for the services aforesaid, may apply to this Court by supplemental bill or otherwise, as defendants or either of them may be advised, for further orders in their behalf.

And complainant may at any time by supplemental bill or otherwise bring into the case any person, firm or corporation not expressly subject to this decree, who may attempt or threaten to take any action or institute any proceeding against complainant under any of said statutes hereinbefore designated, to the end that such orders or supplemental decrees may be entered as the facts and equity may warrant and require.

And the Court retains and reserves unto it jurisdiction over all the parties hereto, and all subjects matter herein not now
276 covered by the pleadings, to the end that such other and further orders and decrees may be made hereafter as may become necessary by reason of any changed condition as to the facts, equities or rights that may hereafter take place or arise.

6. The taxable costs of the case including those covered by orders of the Court, heretofore made or hereafter made on motions to tax or retax, and including printing bill of Buxton-Skinner Stationery Company, shall be paid as follows, to-wit:

The one half by complainant and the other half by the defendants to be recovered by execution to be issued by the Clerk of this Court upon application of any party in interest.

Done and ordered of record as of March 8th, 1909, in open court this March 22nd, 1909, at Kansas City, Missouri.

SMITH McPHERSON, *Judge*.

277 Afterwards, to-wit, on the 22nd day of March, 1909, a Motion to Modify Decree was filed. Said Motion is in words and figures as follows, to-wit:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 2988. Equity.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY
vs.
HERBERT S. HADLEY et al.

And Equity Cases No. 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004, 3006.

Motion.

Now comes complainant in each one of the above numbered cases, and separately moves the court to modify and change its opinion and decree in these respects:

1. To strike from the opinion paragraph 4 thereof because it is based upon a misconception, and is an erroneous statement of the law.

2. To strike from paragraph 11 of the opinion these words:

"It being a legislative act, and not a judicial one, this Court can not fix rates. If it could, two and one-half cent passenger rates would be fixed for the stronger roads, and three for the others. But that is for the legislature acting itself with experts, such as the State employed in these cases, or through a Commission with like assistance."

This, for the reason that it was no part of the duty of the court to so decide, and it is directly in conflict with the express findings of fact. At a two and a half cent rate the returns would not be sufficient compensation.

3. To strike from paragraph 11 of the opinion these words:

278 "Each party will pay the costs by such party made, except the compensation of the Master and Stenographer. The half of those will be paid by complainants, and the other half by respondents."

This, for the reason that it is contrary to the rules and principles of law and equity and to good conscience.

4. To modify the decree so far as it taxes any costs against complainant, and to re-tax the same, for that there is no reason in equity or good conscience to tax same against it.

FRANK HAGERMAN,
Solicitor for Complainant.

279 Afterwards, to-wit, on the 3rd day of April, 1909, an Amended Motion to Modify Decree was filed. Said Amended Motion is in words and figures as follows, to-wit:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 2988. Equity.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY
vs.
HERBERT S. HADLEY et al.

And Equity Cases No. 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004, 3006.

Amended Motion.

Now comes complainant in each and every one of the above entitled causes, and separately amends the motion heretofore filed to modify and change the opinion and decree in each and every one of the said causes, and thereupon further moves the court:

1. To set aside the said decree as entered March 22, 1909, as of March 8, 1909, so far as concerns those defendants who neither ap-

peared nor demurred, nor adopted the answers of the railroad commissioners and attorney general, of which there are twenty-six in the eighteen cases. This, for the reason that the court erroneously made provisions for and against said defendants when they were not before it, and when complainants actually asked to dismiss as to them, to which, counsel for the said officers in open court consented. It is neither right nor just to enter a decree against persons not in court, nor can the court refuse complainant the right to dismiss as to them.

2. To set aside the portion of said decree dismissing the bill as to appearing and answering shippers, for that upon the findings and opinion, as well as upon the pleadings, the laws mentioned in paragraph 2 of the decree so entered as of March 8th, 1909, are
280 confiscatory and void as to the shippers and passengers, and those classes of persons represented by them. Those of them who defended and adopted the answer and defense of the state officers. Each complainant is entitled to have the right involved duly established as against them. Because an injunction is found to be unnecessary as to them is no reason for dismissing the bill, and it is inconsistent to enter such dismissal and then attempt to hold jurisdiction against them in the future as if there had been some adjudication as to their rights.

3. To set aside the provision of said decree as to costs for that the attempt in the decree to cure the error already rendered in taxing the costs, is erroneous. In the original opinion the decision was that each party should pay the costs by such party made, except the compensation of the master and stenographer, half of which should be paid by complainants and the other half by defendants. In open court it was announced that such rule was adopted solely because the defendants were state officers and the state might not appropriate the amount necessary to meet these costs. The supreme court has twice decided this is no excuse and no justification for taxing the costs against the other party. It was conceded by both parties that those shippers who adopted the defense of the state officers and were defended by them ought not to be compelled to pay any additional costs. This concession was agreed to by the court; yet, in the decree as now entered, this concession of both sides and the court is absolutely ignored. The only change made as to the costs is that one-half of all the costs shall be paid by each party. There is no legal excuse or justification to tax any of these costs to complainants; ample money has already been appropriated to the state officers for the purpose of paying the same, and even if it had not been so appropriated, this would have been no reason for making an order that complainant should pay costs.

FRANK HAGERMAN,
Solicitor for Complainant.

281 Afterwards, to-wit, on the 3rd day of April, 1909, a Notice was filed. Said Notice is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General, et al., Defendants.

And Equity Cases Nos. 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004 and 3006.

Notice.

To Herbert S. Hadley, Attorney General, et al., Defendants, and their attorneys of record:

You are hereby notified that complainants will, upon Saturday, April 3rd, 1909, in the federal court room at Kansas City Missouri, call up before the Honorable Smith McPherson, Judge of said court, the motion to modify and change the opinion and decrees in the above entitled causes heretofore filed, copy of which was delivered to defendants, and also the amended motion, copy of which is herewith delivered to you.

FRANK HAGERMAN,
Solicitor for Complainants.

Received copy of above notice and of the motion and amended motion therein referred to this 27th day of March, 1909.

SANFORD B. LADD,
Solicitor for Defendants.

282 Afterwards, towit, on the 17th day of April, A. D. 1909, the same being a day of the regular November term of said Court, an amended final decree was entered.

Said amended final decree is in words and figures as follows:

In the Circuit Court of the United States, Western Division of the Western District of Missouri, at Kansas City.

No. 2999.

QUINCY, OMAHA & KANSAS CITY RAILROAD COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General et al., Defendants.

Amended Final Decree.

This case heretofore came on for hearing, the parties appearing by counsel, and was submitted upon the motion and amended motion to change and modify the decree of March 8, 1909, and the court

being fully advised in the premises, now upon this 17th day of April, 1909, amends the said decree heretofore entered so that same shall read as follows:

The above entitled cause this March 8th, 1909, comes on for final decree upon the evidence and stipulations upon file and of record herein, the case having heretofore been fully argued and fully submitted and taken under advisement. And now at this time the court being fully advised in the premises, the parties appearing by their respective counsel, for reasons stated in an opinion by the trial judge and findings of fact signed and filed herein, orders, adjudges and decrees:

1. The maximum freight laws of Missouri of 1905 and 1907, and the passenger rate law of 1907, mentioned in para-
283 graph 2 hereof, and set forth in the original bill and amendments and supplements thereto, are unreasonable and confiscatory, do not afford the complainant any fair or reasonable return upon the value of its property, and to comply therewith would take the property of complainant without due process of law. None of the provisions thereof should or can be rightfully enforced against complainant, its officers, agents or employés. A finding of fact has been prepared and filed, and is hereby referred to as if made part hereof.

2. Defendants Elliott W. Major, Attorney General of the State of Missouri, John A. Knott, H. R. Oglesby and Frank A. Wightman, Railroad Commissioners of the state of Missouri, and each of them, their agents, employés and sucessors, are hereby enjoined from enforcing, or attempting, directly or indirectly, by suit or in any other manner whatsoever, to enforce against complainant, its officers, agents employés or servants, any of the provisions of or penalties provided for in the following acts of the legislature of the state of Missouri:

First, an act approved April 14, 1905, entitled:

"An Act to amend article IV, chapter 12 of the Revised Statutes of Missouri of 1899, entitled 'Railroad classification, charged, commissioners,' by adding a new section thereto, to be known as section 1195*a*."

Second, an act approved April 15, 1905, entitled:

"An Act, entitled 'An Act to amend chapter 12 of the Revised Statutes of Missouri, revision of 1899, entitled "Corporations, private," by repealing section 1194 of said Revised Statutes, being part of article IV of said chapter concerning railroad classification—charges—commissioners, and to enact in lieu thereof the following new sections providing for the regulation of freight charged by railroads and the recovery of penalties for the violation thereof.'"

Third, an act approved February 27, 1907, entitled:

"An Act to repeal sections 1191 and 1192 of chapter 12, article 4, Revised Statutes of Missouri, 1899, entitled 'Railroad classification—charges—commissioners,' by striking out sections 1191 and 1192 and enacting the following new sections in lieu thereof, to be known as sections 1191 and 1192 and 1192*a*."

Fourth, an act approved March 19, 1907, entitled:

"An act to repeal an act of the 43rd general assembly, ap-
284 proved April 15, 1905, entitled 'An act to amend chapter 12 of the Revised Statutes of Missouri, revision of 1899, entitled "Corporations, private," by repealing section 1194 of said Revised Statutes, being part of article IV of said chapter, concerning railroad classification, charges, commissioners, and to enact in lieu thereof the following new sections providing for the regulation of freight charges by railroads, and the recovery of penalties for the violation thereof,' and to repeal an act of the 43rd general assembly, approved April 14, 1905, entitled 'An act to amend Article IV, chapter 12 of the Revised Statutes of Missouri, 1899, entitled "Railroad classifications, charges, commissioners," by adding a new section thereto, to be known as section 1195*a*, fixing the charges for carrying undressed stone, crushed rock and building or paving brick,' and to enact in lieu thereof certain new sections, to be known as sections 1194, 1194*a*-1, 1194*b*-1 and 1194*c*-1, providing for the regulation of freight charges by railroads and prescribing the punishment for a violation thereof, which new sections shall read as follows:"

Fifth, an act approved March 19, 1907, entitled:

"An act to amend article 4, chapter 12, Revised Statutes of Missouri of 1899, by adding a new section thereto, to be known as section 1195*a*, and relating to freight charges and classifications."

3. The other defendants who are officers, and their successors, are likewise enjoined from enforcing or attempting to enforce any of said statutory enactments.

4. There is no evidence that either defendants, Daily, Davis, Robb, Riley, Scearce or McIntire, has threatened or intended to institute any action or proceeding against complainant as averred in the bill of complaint, but they have adopted the answers of the Railroad Commissioners and Attorney General. The said bill of complaint and the amendments and supplement to the extent and so far only as it seeks present injunctive relief against them, is upon that ground as to said defendants in his paragraph named, dismissed without prejudice. If, however, at any future time said defendants or either of them in this paragraph named, should take any action, or threaten or attempt to take any action under either or all of said statutes hereinbefore designated, then and in that case the complainant herein may apply to this court by supplemental bill or otherwise as it may be advised, for further orders in that behalf.

285 5. It is further ordered, adjudged and decreed that the defendants, or any of them, when the circumstances have changed so that the rates fixed as aforesaid shall yield to complainant reasonable compensation for the services aforesaid, may apply to this court by supplemental bill or otherwise, as defendants or either of them may be advised, for further orders in their behalf.

And complainant may at any time by supplemental bill or otherwise bring into the case any person, firm or corporation not expressly subject to this decree, who may attempt or threaten to take any action or institute any proceedings against complainant under

any of said statutes hereinbefore designated, to the end that such orders or supplemental decree may be entered as the facts and equity may warrant and require.

And the court retains and reserves unto it, jurisdiction over all the parties hereto, and all subjects matter herein, not now covered by the pleadings, to the end that such other and further orders and decrees may be made hereafter as may become necessary by reason of any changed condition as to the facts, equities or rights that may hereafter take place or arise.

6. The taxable costs of the case including those covered by orders of the court, heretofore made or hereafter made on motion to tax or retax, and including printing bill of Buxton-Skinner Stationery Company shall be paid as follows, to-wit: The one-half by complainant and the other half by defendants who are Railroad Commissioners and the Attorney General, to be recovered by execution to be issued by the clerk of this court upon application of any party in interest.

7. Some of the defendants having announced their intention to appeal, it is now ordered that no appeal shall supersede the injunctive portions of this decree, but pending any such appeal the
286 complainants shall be permitted to charge the rates permitted by sections 1191 and 1192 of the Revised Statutes of Missouri, 1899, the same as if the Passenger Rate Act approved February 27, 1907, and herein held to be confiscatory, had not been passed. Complainant having by order herein of June 17, 1907, been required to temporarily adopt the rate fixed by said Passenger Rate Act, shall be and is hereby permitted, free from the interference of the parties and classes represented by them, who are hereby ordered not to interfere, to restore and put in force the rates authorized by said sections 1191 and 1192, this court reserving power and jurisdiction from time to time to enforce, change and modify this paragraph of this decree, as well as to protect the complainant in being restored to the right of which said order temporarily deprived it.

8. This decree shall be binding upon and enforceable against the said defendants, not dismissed, their assistants, agents, attorneys and employés, and any class or classes of persons or officers represented by them.

(Signed) SMITH McPHERSON, *Judge*.

287 Afterwards, to-wit, on the 6th day of March, 1911, Declinations to join in appeal were filed. Said declinations are in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 2999.

THE QUINCY, OMAHA AND KANSAS CITY RAILROAD COMPANY, Complainant,

vs.

JOHN A. KNOTT, H. R. OGLESBY, and FRANK A. WIGHTMAN, Railroad and Warehouse Commissioners; Elliott W. Major, Attorney General of the State of Missouri; Joseph M. Patterson, Charles E. Moss, and George J. Dodd, Judges of the County Court of Jackson County, Missouri; Arthur C. Warner, Treasurer of Jackson County, Missouri; Charles M. Daily, William F. Davis and James F. Robb, and F. M. Riley, R. E. Scearce and H. B. McIntyre, Defendants.

To Joseph M. Patterson, Charles E. Moss and George J. Dodd, and Hugh C. Gilbert, Edward L. Martin and Edward E. Axline, as successors respectively to said Joseph M. Patterson, Charles E. Moss and George J. Dodd in the offices of judges of the County Court of said Jackson County; Arthur C. Warner and Overton H. Gentry, Jr., as successor to said Arthur C. Warner in the office of Treasurer of said Jackson County; Charles M. Daily, William F. David, James F. Robb, F. M. Riley, R. E. Scearce and H. B. McIntyre:

Each of you is hereby invited to join with the undersigned in a petition for an appeal in the above entitled cause to the Supreme Court of the United States, to reverse the decree in the above entitled cause, rendered on the 8th day of March, 1909, as amended by the decree herein entered on the 17th day of April, 1909, or you will be deemed to have acquiesced in said decree as amended, and we shall present said petition for an appeal and prosecute said appeal without joining you as a party.

288 Said petition for an appeal will be presented to the said Circuit Court for allowance, at the court room of said court in Kansas City, Jackson County, Missouri, on Monday, the 6th day of March, 1911, at 9 o'clock A. M., or as soon thereafter as said petition can be heard.

ELLIOTT W. MAJOR,
Attorney General of the State of Missouri;
JOHN A. KNOTT,
H. R. OGLESBY,
FRANK A. WIGHTMAN,
Railroad and Warehouse Commissioners, Defendants,
By ELLIOTT W. MAJOR,
Attorney General;
JOHN M. ATKINSON,
Assistant Attorney General;
SANFORD B. LADD,
Counsel for said Defendants.

Service of the above is accepted this 25 day of February, 1911, and we, the undersigned, severally decline to join in said petition for an appeal.

Witness- to Signature-:

CALEB S. MONROE.	JOSEPH M. PATTERSON.
CALEB S. MONROE.	CHARLES E. MOSS.
PORTER B. GODARD.	H. C. GILBERT.
PORTER B. GODARD.	E. L. MARTIN.
PORTER B. GODARD.	E. E. AXLINE.
CALEB S. MONROE.	GEORGE J. DODD.
CALEB S. MONROE.	O. H. GENTRY, JR.
CALEB S. MONROE.	ARTHUR C. WARNER.

289 In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 2999.

THE QUINCY, OMAHA AND KANSAS CITY RAILROAD COMPANY, Complainant,

vs.

JOHN A. KNOTT, H. R. OGLESBY and FRANK A. WIGHTMAN, Railroad and Warehouse Commissioners; Elliott W. Major, Attorney General of the State of Missouri; Joseph M. Patterson, Charles E. Moss and George J. Dodd, Judges of the County Court of Jackson County, Missouri; Arthur C. Warner, Treasurer of Jackson County, Missouri; Charles M. Daily, William F. Davis and James F. Robb, and F. M. Riley, R. E. Scearce and H. B. McIntyre, Defendants.

To Joseph M. Patterson, Charles E. Moss and George J. Dodd, and Hugh C. Gilbert, Edward L. Martin and Edward E. Axline, as successors respectively to said Joseph M. Patterson, Charles E. Moss and George J. Dodd in the offices of judges of the County Court of said Jackson County; Arthur C. Warner and Overton H. Gentry, Jr., as successor to said Arthur C. Warner in the office of Treasurer of said Jackson County; Charles M. Daily, William F. David, James F. Robb, F. M. Riley, R. E. Scearce and H. B. McIntyre:

Each of you is hereby invited to join with the undersigned in a petition for an appeal in the above entitled cause to the Supreme Court of the United States, to reverse the decree in the above entitled cause, rendered on the 8th day of March, 1909, as amended by the decree herein entered on the 17th day of April, 1909, or you will be deemed to have acquiesced in said decree as amended, and we shall present said petition for an appeal and prosecute said appeal without joining you as a party.

290 Said petition for an appeal will be presented to the said Circuit Court for allowance, at the court room of said court in Kansas City, Jackson County, Missouri, on Monday, the 6th day

of March, 1911, at 9 o'clock A. M., or as soon thereafter as said petition can be heard.

ELLIOTT W. MAJOR,
Attorney General of the State of Missouri;
JOHN A. KNOTT,
H. R. OGLESBY,
FRANK A. WIGHTMAN,
Railroad and Warehouse Commissioners, Defendants,
By ELLIOTT W. MAJOR,
Attorney General;
JOHN M. ATKINSON,
Assistant Attorney General;
SANFORD B. LADD,
Counsel for said Defendants.

Service of the above is accepted this 27th day of February, 1911, and we, the undersigned, severally decline to join in said petition for an appeal.

Witness to Signature:

JAMES S. SIMRALL. JAMES F. ROBB.

291 In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 2999.

THE QUINCY, OMAHA AND KANSAS CITY RAILROAD COMPANY, Complainant,
vs.
JOHN A. KNOTT, H. R. OGLESBY and FRANK A. WIGHTMAN, Railroad and Warehouse Commissioners; Elliott W. Major, Attorney General of the State of Missouri; Joseph M. Patterson, Charles E. Moss and George J. Dodd, Judges of the County Court of Jackson County, Missouri; Arthur C. Warner, Treasurer of Jackson County, Missouri; Charles M. Daily, William F. Davis, and James F. Robb, and F. M. Riley, R. E. Scearce and H. B. McIntyre, Defendants.

To Joseph M. Patterson, Charles E. Moss and George J. Dodd and Hugh C. Gilbert, Edward L. Martin and Edward E. Axline, as successors respectively to said Joseph M. Patterson, Charles E. Moss and George J. Dodd, in the offices of judges of the County Court of said Jackson County; Arthur C. Warner and Overton H. Gentry, Jr., as successor to said Arthur C. Warner, in the office of Treasurer of said Jackson County; Charles M. Daily, William F. David, James F. Robb, F. M. Riley, R. E. Scearce and H. B. McIntyre:

Each of you is hereby invited to join with the undersigned in a petition for an appeal in the above entitled cause to the Supreme Court of the United States, to reverse the decree in the above en-

titled cause, rendered on the 8th day of March, 1909, as amended by the decree herein entered on the 17th day of April, 1909, or you will be deemed to have acquiesced in said decree as amended, and we shall present said petition for an appeal and prosecute said appeal without joining you as a party.

292 Said petition for an appeal will be presented to the said Circuit Court for allowance, at the court room of said court, in Kansas City, Jackson County, Missouri, on Monday, the 6th day of March, 1911, at 9 o'clock A. M., or as soon thereafter as said petition can be heard.

ELLIOTT W. MAJOR,
Attorney General of the State of Missouri;
JOHN A. KNOTT,
H. R. OGLESBY
FRANK A. WIGHTMAN,
Railroad and Warehouse Commissioners, Defendants,
By ELLIOTT W. MAJOR,
Attorney General;
JOHN M. ATKINSON,
Assistant Attorney General;
SANFORD B. LADD,
Counsel for Said Defendants.

Service of the above is accepted this 25 day of February, 1911, and we, the undersigned, severally decline to join in said petition for an appeal.

F. M. RILEY.
R. E. SCEARCE.

Witness to Signature:
L. B. HOOPER.

293 In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 2999.

THE QUINCY, OMAHA AND KANSAS CITY RAILROAD COMPANY, Complainant,

vs.

JOHN A. KNOTT, H. R. OGLESBY, and FRANK A. WIGHTMAN, Railroad and Warehouse Commissioners; Elliott W. Major, Attorney General of the State of Missouri; Joseph M. Patterson, Charles E. Moss and George J. Dodd, Judges of the County Court of Jackson County, Missouri, Arthur C. Warner, Treasurer of Jackson County, Missouri; Charles M. Daily, William F. Davis, and James F. Robb and F. M. Riley, R. E. Scearce and H. B. McIntyre, Defendants.

To Joseph M. Patterson, Charles E. Moss and George J. Dodd and Hugh C. Gilbert, Edward L. Martin and Edward E. Axline, as successors respectively to said Joseph M. Patterson, Charles E. Moss and George J. Dodd, in the offices of judges of the County Court of said Jackson County; Arthur C. Warner and Overton H. Gentry, Jr., as successor to said Arthur C. Warner, in the office of Treasurer of said Jackson County; Charles M. Daily, William F. David, James F. Robb, F. M. Riley, R. E. Scearce and H. B. McIntyre:

Each of you is hereby invited to join with the undersigned in a petition for an appeal in the above entitled cause to the Supreme Court of the United States, to reverse the decree in the above entitled cause, rendered on the 8th day of March, 1909, as amended by the decree herein entered on the 17th day of April, 1909, or you will be deemed to have acquiesced in said decree as amended, and we shall present said petition for an appeal and prosecute said appeal without joining you as a party.

294 Said petition for an appeal will be presented to the said Circuit Court for allowance, at the court room of said court in Kansas City, Jackson County, Missouri, on Monday, the 6th day of March, 1911, at 9 o'clock A. M., or as soon thereafter as said petition can be heard.

ELLIOTT W. MAJOR,
Attorney General of the State of Missouri;
JOHN A. KNOTT,
H. R. OGLESBY,
FRANK A. WIGHTMAN,
Railroad and Warehouse Commissioners, Defendants.
By ELLIOTT W. MAJOR,
Attorney General;
JOHN M. ATKINSON,
Assistant Attorney General;
SANFORD B. LADD,
Counsel for said Defendants.

Service of the above is accepted this 25 day of February, 1911, and we, the undersigned, severally decline to join in said petition for an appeal.

F. M. RILEY.
R. E. SCEARCE.
H. B. McINTYRE.

Witnesses to Signature:

L. B. HOOPER.
M. G. ROBERTS.

295 In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 2999.

THE QUINCY, OMAHA AND KANSAS CITY RAILROAD COMPANY, Complainant,

vs.

JOHN A. KNOTT, H. R. OGLESBY, and FRANK A. WIGHTMAN, Railroad and Warehouse Commissioners; Elliott W. Major, Attorney General of the State of Missouri; Joseph M. Patterson, Charles E. Moss and George J. Dodd, Judges of the County Court of Jackson County, Missouri, Arthur C. Warner, Treasurer of Jackson County, Missouri; Charles M. Daily, William F. Davis, and James Robb and F. M. Riley, R. E. Scearce and H. B. McIntyre, Defendants.

To Joseph M. Patterson, Charles E. Moss and George J. Dodd and Hugh C. Gilbert, Edward L. Martin and Edward E. Axline, as successors respectively to said Joseph M. Patterson, Charles E. Moss and George J. Dodd, in the offices of judges of the County Court of said Jackson County; Arthur C. Warner and Overton H. Gentry, Jr., as successor to said Arthur C. Warner, in the office of Treasurer of said Jackson County; Charles M. Daily, William F. David, James F. Robb, F. M. Riley, R. E. Scearce and H. B. McIntyre:

Each of you is hereby invited to join with the undersigned in a petition for an appeal in the above entitled cause to the Supreme Court of the United States, to reverse the decree in the above entitled cause, rendered on the 8th day of March, 1909, as amended by the decree herein entered on the 17th day of April, 1909, or you will be deemed to have acquiesced in said decree as amended, and we shall present said petition for an appeal and prosecute said appeal without joining you as a party.

296 Said petition for an appeal will be presented to the said Circuit Court for allowance, at the court room of said court in Kansas City, Jackson County, Missouri, on Monday, the 6th day

of March, 1911, at 9 o'clock A. M., or as soon thereafter as said petition can be heard.

ELLIOTT W. MAJOR,
Attorney General of the State of Missouri;
JOHN A. KNOTT,
H. R. OGLESBY,
FRANK A. WIGHTMAN,
Railroad and Warehouse Commissioners, Defendants.
By ELLIOTT W. MAJOR,
Attorney General;
JOHN M. ATKINSON,
Assistant Attorney General;
SANFORD B. LADD,
Counsel for said Defendants.

Service of the above is accepted this 1st day of March 1911, and we, the undersigned, severally decline to join in said petition for an appeal.

Witness to Signature. Signature.
JOHN W. WILSON. W. F. DAVIS.

297 Afterwards, to-wit, on the 6th day of March, 1911, an affidavit was filed. Said affidavit is in words and figures as follows:

STATE OF MISSOURI,
County of Andrew, ss:

J. W. Roberts, of lawful age, being duly sworn, upon his oath says that he was well and personally acquainted with the late Chas. M. Daily of Andrew County, in his lifetime. That the said Chas. M. Daily is the Chas. M. Daily who is named as a defendant in the cause of "Quincy, Omaha and Kansas City Railroad Company vs. Chas. M. Daily, et al.," and that the said Chas M. Daily departed this life on the 16th day of February, 1911.

J. W. ROBERTS.

Subscribed and sworn to before me this 2nd day of March, 1911.
[SEAL.] O. H. CLARK, *Circuit Clerk,*
Per E. E. TOWNSEND, *Deputy.*

298 Afterwards, to-wit, on the 6th day of March, 1911, Defendants' Assignment of Errors was filed. Said Assignment of Errors is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 2999.

THE QUINCY, OMAHA AND KANSAS CITY RAILROAD COMPANY, Complainant,

vs.

JOHN A. KNOTT, H. R. OGLESBY, and FRANK A. WIGHTMAN, Railroad and Warehouse Commissioners; Elliott W. Major, Attorney General of the State of Missouri; Joseph M. Patterson, Charles E. Moss, and George J. Dodd, Judges of the County Court of Jackson County, Missouri; Arthur C. Warner, Treasurer of Jackson County, Missouri; Charles M. Daily, William F. Davis and James F. Robb, and F. M. Riley, R. E. Scearce and H. B. McIntyre, Defendants.

Assignment of Errors.

Now come John A. Knott, H. R. Oglesby and Frank A. Wightman, Railroad and Warehouse Commissioners, and Elliott W. Major, Attorney General of the State of Missouri, defendants in the above entitled cause, and aver that in the record and proceedings and decree in the above entitled cause, there is manifest error, in this:

1. The court erred in adjudging and decreeing, by its amended decree, that the maximum freight rate laws of Missouri of 1905 and 1907 are unreasonable and confiscatory and do not afford the complainant any fair or reasonable return upon the value of its property, and that to comply therewith would take the property of complainant without due process of law; because the evidence shows that said laws are reasonable and compensatory, and that they do afford the complainant a fair and reasonable return upon the value of its property; and upon the evidence in the case, the complainant's bill and its amended and supplemental bill, in so far as they sought for any relief against, or brought into question the validity of said maximum freight rate laws, should have been dismissed.

2. The court erred in its amended decree in thereby adjudging and decreeing that the defendant, Elliott W. Major, Attorney General of the State of Missouri, be enjoined from enforcing, or attempting, directly or indirectly, by suit or in any other manner whatsoever, to enforce against the complainant, its officers, agents, employés or servants, any of the provisions of or penalties provided for in the acts of the Legislature of the State of Missouri, mentioned in said decree, and approved, respectively, April 14, 1905, April 15, 1905, and two approved March 19, 1907.

3. The court erred in its amended decree in thereby adjudging and decreeing that the defendants, John A. Knott, H. R. Oglesby and Frank A. Wightman, Railroad Commissioners of the State of Missouri, be enjoined from enforcing, or attempting, directly
299 or indirectly, by suit or in any other manner whatsoever, to enforce against the complainant, its officers, agents, em-

ployés or servants, any of the provisions of or penalties provided for in the acts of the Legislature of the State of Missouri, mentioned in said decree, and approved, respectively, April 14, 1905, April 15, 1905, and two approved March 19, 1907.

4. The court erred in decreeing that the maximum freight rate laws of 1905 and 1907 are unreasonable and confiscatory, do not afford the complainant any fair or reasonable return upon the value of its property, and that to comply therewith would take the property of complainant wthout due process of law; because the evidence in the case is not sufficient to overcome the presumption in favor of the validity of those laws and the evidence does not establish clearly and beyond all doubt their invalidity.

5. The court erred in decreeing that the freight rate laws of 1905 and 1907 were confiscatory and therefore deprived the complainant of its property without due process of law, because the burden of proof upon that issue was upon the complainant, and that burden was not sustained. The exact gross revenue from intrastate business for any given period was easy of ascertainment. The ascertainment of the expense of earning that revenue was difficult by reason of the fact that interstate and intrastate freight were transported in the same trains and often in the same cars. It was in the power of the complainant, at any time during the litigation, to have determined, by actual observation and investigation for a period which should be typical, the volume of freight, both intrastate and interstate, carried on each of its trains within the State of Missouri during such period, the revenue from each class of freight and also, quite closely, the expense of moving each of said trains within the State, and to have exhibited to the court the result of such observation and investigation. The court would thus have been enabled to determine approximately how much of the total expense of moving said trains should be assigned to the intrastate and interstate freight, respectively, contained in them.

No evidence of this character was adduced, no tests of this kind made. Upon this question the court was left to reach a conclusion upon the opinions of witnesses. No decree should have been rendered for complainant until this evidence of actual facts of vital importance, which was at its command, had been adduced to the court.

6. The court erred in adjudging and decreeing in its amended final decree herein that the maximum freight rate laws of Missouri, of 1905 and 1907, were unreasonable and confiscatory, and did not afford the complainant any fair or reasonable return upon the value of its property, and that to comply therewith would take the property of complainant without due process of law; and that none of the provisions thereof should or can be rightfully enforced against the complainant, its officers, agents, or employés.

Because it appears from the evidence that a very large part of the intrastate freight transported by the complainant is not governed as to the rates to be charged therefor by the Acts of 1905 and the Acts of 1907, but that the maximum rates for the transportation thereof are fixed by the State Board of Railroad and Warehouse Commissioners, by authority of law, conferring upon them that power. It further appears from the evidence, that the com-

plainant has not been charging for the transportation of such freight the rates so fixed by the State Board of Railroad and Warehouse Commissioners, but rates less than those so fixed. But the complainant failed to show and made no effort to show what its
300 revenue from the intrastate freight business would have been had it charged the rates allowed by the State Board of Railroad and Warehouse Commissioners for such portion of the freight carried by it, as was not governed by the Acts of 1905 and 1907; and therefore there is no evidence in the case that if the complainant had charged such rates and had also complied with the Acts of 1905 and 1907, it would not have received a revenue from its intrastate freight business which would have afforded it a fair, adequate and just return for doing such business. If it had charged what it might, according to the law of the State, have charged for the transportation of such freight, its receipts for doing its entire intrastate freight business might, for any evidence which appears in the case, have been sufficient to afford it all the net profits to which it was entitled.

7. The court erred in adjudging and decreeing in the amended final decree that the maximum freight rate laws of Missouri of 1905 and 1907 are unreasonable and confiscatory and do not afford the complainant any fair or reasonable return upon the value of its property, and that to comply therewith would take the property of complainant without due process of law, because the said acts of 1905 took effect on the 16th day of June, 1905, and the original bill herein, alleging the unconstitutionality of said Acts of 1905, and seeking to enjoin their enforcement, was filed by the complainant on said 16th day of June, 1905, and on the same day a restraining order was issued herein, enjoining the defendants, the Railroad and Warehouse Commissioners, "from taking or making out or printing or delivering any schedule of rates for complainant, containing the maximum rates fixed by said Acts." And on the 12th day of July, 1905, the court continued said restraining order as a temporary injunction, which was in force as against said defendants from said date until the final decree was entered. Therefore, at the time of the filing of said bill and the issue of said restraining order, the defendants, said Railroad and Warehouse Commissioners, because the law had not yet taken effect, had enjoyed no opportunity to revise the then existing schedule of rates.

The said defendants, Railroad and Warehouse Commissioners, had authority, under the law, to fix maximum rates for the transportation of that portion of the intrastate freight for which rates were not fixed by the Acts of 1905, which said portion was very large in volume and produced to the complainant much the larger part of its entire revenue for the transportation of intrastate freight. The said Railroad and Warehouse Commissioners might, if they had not been prevented by the restraining order and temporary injunction herein, have fixed such rates for the transportation of said portion of such intrastate freight, and made schedules therefor, which schedules should also have embraced the maximum rates for the commodities mentioned in the said Acts of 1905, as would have permitted the

complainant, while observing said schedules and said acts of 1905, to have derived from its intrastate freight business, as a whole, a gross revenue sufficient to have yielded to it a fair, just and adequate net return or profit from the doing of its said intrastate freight business. The complainant should have deferred the institution of this suit until the said Board of Railroad and Warehouse Commissioners had fixed rates and adopted schedules so low as to disable the complainant from realizing an adequate revenue upon its entire intrastate freight business.

Therefore, the action was prematurely brought; and for
301 this reason no restraining order or temporary injunction or final decree should have been rendered as to either of said maximum freight rate Acts.

8. The court erred in adjudging and decreeing by its amended final decree that the passenger rate law of 1907, approved February 27, 1907, is unreasonable and confiscatory and does not afford the complainant any fair or reasonable return upon the value of its property, and that to comply therewith would take the property of complainant without due process of law; because, upon the evidence in the case, said passenger rate law is reasonable and compensatory and does afford the complainant a fair and reasonble return upon the value of its property; and upon the evidence in the case, the complainant's bill, and its amended and supplemental bills, in so far as they sought for any relief against or brought into question the validity of said passenger rate law of 1907, should have been dismissed.

9. The court erred in decreeing that the passenger rate law of 1907 is unreasonable and confiscatory, does not afford the complainant any fair or reasonable return upon the value of its property, and that to comply therewith would take the property of complainant without due process of law; because the evidence in the case is not sufficient to overcome the presumption in favor of the validity of the law, and the evidence does not establish clearly and beyond all doubt its invalidity.

10. The court erred in its amended decree in thereby adjudging and decreeing that the defendant, Elliott W. Major, Attorney General of the State of Missouri, be enjoined from enforcing, or attempting, directly or indirectly, by suit or in any other manner whatsoever, to enforce against the complainant, its officers, agents, employés or servants, any of the provisions of or penalties provided for in said Act of the Legislature of the State of Missouri, mentioned in said decree and approved February 27, 1907.

11. The court erred in its amended decree in thereby adjudging and decreeing that the defendants, John A. Knott, H. R. Oglesby and Frank A. Wightman, Railroad Commissioners of the State of Missouri, be enjoined from enforcing, or attempting, directly or indirectly, by suit or in any other manner whatsoever, to enforce against the complainant, its officers, agents, employés or servants, any of the provisions of or penalties provided for in said act of the Legislature of the State of Missouri, mentioned in said decree and approved February 27, 1907.

12. The defendants, John A. Knott, H. R. Oglesby and Frank A. Wightman, Railroad and Warehouse Commissioners, for themselves assert that the court erred in that part of its decree whereby it enjoined them from enforcing, or attempting, directly or indirectly, to enforce against the complainant, its officers, agents, employés or servants, any of the provisions of or the penalties provided for in the passenger rate Act, approved February 27, 1907; because, under the laws of the State of Missouri, they have no functions of any kind to perform in relation to rates for the carriage of passengers, nor do such laws vest in them any authority, or devolve upon them any duties to be performed by them, directly or indirectly, to require or compel obedience to any laws relating to rates for the carriage of passengers.

13. The court erred in permitting the complainant, against the objection of the defendants to file herein its alleged amended and supplemental bill of complaint and the amendment thereto, because
the original bill was based upon the Acts of the 43rd General
302 Assembly of the State of Missouri, approved April 14, 1905, and April 15, 1905, which fixed maximum rates for intrastate freight, and the alleged amended and supplemental bill and the amendment thereto is based upon the Acts of the 44th General Assembly of the State of Missouri, approved March 19, 1907, which repealed said Acts of 1905 and established a new maximum of rates for intrastate freight, and the Act of the 44th General Assembly of the State of Missouri, approved March 19, 1907, fixing rates for the transportation of fruit, and the Act of the 44th General Assembly of the State of Missouri, approved February 27, 1907, fixing a maximum schedule of rates for passenger traffic, and the matters set forth in the said alleged amended and supplemental bill of complaint and the amendment thereto, are not germane to or supplemental of the original bill of complaint herein.

14. The court erred in permitting the complainant, against the objection of defendants, to file the alleged amended and supplemental bill of complaint and the amendment thereto, so far as the same relates to the Act of the 44th General Assembly of the State of Missouri, approved February 27, 1907, fixing a maximum schedule of passenger rates, because the matters set forth in said alleged amended and supplemental bill, and the amendment thereto, relative to said Act of the 44th General Assembly of the State of Missouri, fixing a maximum schedule of passenger rates, are not germane to or supplemental of any of the matters alleged in the original bill.

15. The court erred in overruling the demurrer of the defendants to the alleged amended and supplemental bill of complaint and the amendment thereto, because the matters contained in said alleged amended and supplemental bill of complaint and the amendment thereto, are not germane to or supplemental of the original bill, and if they constitute any cause of action whatever, constitute a new, original and independent cause of action not connected with or dependent upon the original cause of action, and one that accrued, if at all, long after the original bill was filed.

16. The court errerd in overruling the demurrer of defendants to

the portions and paragraphs of the alleged amended and supplemental bill of complaint and the amendment thereto, relative to the Act of the 44th General Assembly of the State of Missouri, fixing a maximum schedule of passenger rates, because such portions and paragraphs of the alleged amended and supplemental bill of complaint and the amendment thereto are not germane to or supplemental of the original bill of complaint, and constitute, if anything, a new and independet cause of action not connected with or dependent upon the original cause of action, and one that accrued, if at all, long after the original bill was filed.

17. The court erred in granting to the complainant the relief asked, with respect to the Act of the 44th General Assembly of the State of Missouri, fixing a maximum schedule of passenger rates, because is was not authorized to take jurisdiction of that matter upon a bill of complaint filed as an amendment or supplement of a bill based upon Acts of the 43rd General Assembly of the State of Missouri, which were confined to freight rates and had been repealed.

18. The court erred in enjoining the defendant, Elliott W. Major, Attorney-General of the State of Missouri, from prosecuting the suits for injunctive relief, instituted by his predecessor in office, Herbert S. Hadley, in the State Court of Missouri, against the complainant prior to the filing of the alleged amended and supplemental bill of complainant herein.

303 19. The court erred in finding that the expenses of doing the intrastate business over the interstate is greater for carrying freight by at least fifty per cent. By this language in the finding is meant at least fifty per cent more in proportion to revenue, while upon the weight of credible evidence in the case, the expense of doing the intrastate freight business over the interstate is not greater than thirty per cent per ton per mile.

20. The court erred in finding that the evidence shows that the cost of doing the intrastate freight business, as between intrastate and interstate, apportioned upon the revenue basis with added extra cost, brings a result which is fair, representative or just.

21. The court erred in finding that aside from the revenue basis, the evidence shows that the amount ascertained by the court in any of the cases, as the expense and extra cost of doing the intrastate freight business, is fair or justly represents the expense of doing the intrastate freight business.

The appellants assert, on the contrary, that aside from the revenue basis, there is no evidence in the case from which the result as found by the court as to the expense of doing the intrastate freight business can be reached.

22. The court erred in finding that the proper method of dividing the total expense of doing complainant's freight business in the State and assigning the proper proportion thereof to the intrastate freight business, was by the application of the revenue theory, and in accordance with that theory, dividing the total expense between the two classes of business in proportion to the revenue derived from each and then to the portion thus assigned to the intrastate freight business, adding such an amount as would represent fifty per cent greater

expense in proportion to revenue for the intrastate than for the interstate business. The consequence was to burden the intrastate freight business with a portion of the total expense very largely in excess of its just proportion and a much greater share thereof than was actually incurred in doing that business.

The court should have found that the proper method of ascertaining that part of the total State freight expense justly assignable to the intrastate freight, was by determining, as closely as possible, the average cost per ton mile of handling and transporting intrastate and interstate freight, respectively. The average cost per ton per mile deducted from the average revenue per ton per mile (which is easily ascertainable from the evidence) would have produced the net revenue per ton per mile derived from each class of freight. The court erred in its finding which rejected this method, by the application of which the evidence in the case shows that complainant might have complied with the freight rate Acts of 1905 and 1907, and would still have derived from the doing of its intrastate business an adequate profit fully equivalent to any net return to which it is by law entitled.

23. The court erred in finding that the sum total of the extra cost of doing the intrastate freight business would not be changed if ascertained according to the ton mile theory.

On the contrary, the evidence shows clearly that if the expense of doing the intrastate freight business be ascertained by the application of the ton mile theory, that expense would be found to be very much less than the amount found by the court; so much less as to leave to the complainant a reasonable net return for doing the business.

304 24. The court erred in finding that the revenue basis is the proper method of ascertaining the expense of the intrastate passenger traffic. In adopting that method the court divided the total expense of the passenger business done in the State between the intrastate and the interstate business by assigning to each class such a proportion of such total expense as the revenue from each class of business bore to the total revenue from the State passenger traffic, and then adding to the proportion thus ascertained for the intrastate, such an amount as would represent twenty-five per cent greater expense in proportion to revenue for the intrastate than for the interstate business. The result of the application of this method was to charge the intrastate business with a much larger share of the total expense than was actually incurred in doing that business.

The true method is to ascertain the average revenue and expense of carrying a passenger one mile, in each class of business, and the difference would be the net revenue or deficit on each passenger mile.

The evidence shows that the net revenue per passenger mile is greater in the intrastate than in the interstate business, and that the net revenue from its intrastate passenger business, if charged for at the rates fixed by the Act of February 27, 1907, affords to the complainant a reasonable and adequate return for doing the business.

25. The court erred in finding that the expense of doing the State passenger business over the interstate is at least twenty-five per cent;

this language meaning twenty-five per cent more in proportion to revenue. The evidence in the case does not support this finding.

26. The court erred in adopting the tables of earnings and expenses of the complainant, set forth in the finding of facts, because the said tables of expenses and of earnings did not cover any fairly representative period of operations of the complainant, and because said tables of expenses and earnings are not supported by any competent evidence in the case.

27. The court erred in finding that the short line between two competitive points, necessarily fixes the rate. If the rate is thus fixed it is because the complainant and the other railroad companies of the State have agree with each other that it shall be so fixed.

28. The court erred in finding that it was conceded by the experts that the companies accurately and honestly kept their books, showing the facts set out in the findings of the court. The books of the companies did not show the facts set out in said findings, nor did the experts for the State concede that they did.

29. The court erred in finding (as stated in the opinion), that evidence in the case tended to show that a large number of men have been discharged from the service of the railroad companies by reason of the reduction of the rates. Not a reduction in rates, but a general depression in business and the want of business to keep the men employed, was the cause of their discharge.

30. The court erred in finding that the value of the complainant's franchise, included in the total valuation of its property as fixed by the State Board of Equalization, was so small a per cent of such total valuation as to make no appreciable difference in the result of the case.

On the contrary, the evidence shows that the value of the franchise was a substantial part of such total valuation.

31. The court erred in finding that if the value of complainant's franchise were altogether omitted from the value of its property, it could not have obtained from the operation of its property, or from the doing of the intrastate freight business, the return to
305 which it is entitled.

32. The court erred in finding that the complainant was entitled to a return upon the value of its franchise.

Wherefore, these defendants pray that the said amended final decree be reversed, and that said court may be directed to enter a decree dismissing the complainant's bill, its amended and supplemental bill, and the amendment thereto.

ELLIOTT W. MAJOR,
Attorney General;
JOHN M. ATKINSON,
Assistant Attorney General;
SANFORD B. LADD,
Solicitors for Defendants John A. Knott, H. R. Oglesby and Frank A. Wightman, Railroad and Warehouse Commissioners, and Elliott W. Major, Attorney General of the State of Missouri.

306 Afterwards, to wit, on the 6th day of March, 1911, Defendants' Petition for Appeal was filed. Said Petition for Appeal is in words and figures as follows:

307 In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 2999.

THE QUINCY, OMAHA AND KANSAS CITY RAILROAD COMPANY, Complainant.

v.

JOHN A. KNOTT, H. R. OGLESBY and FRANK A. WIGHTMAN, Railroad and Warehouse Commissioners; Elliott W. Major, Attorney General of the State of Missouri; Joseph M. Patterson, Charles E. Moss and George J. Dodd, Judges of the County Court of Jackson County, Missouri; Arthur C. Warner, Treasurer of Jackson County, Missouri; Charles M. Daily, William F. Davis and James F. Robb, and F. M. Riley, R. E. Scearce and H. B. McIntyre, Defendants.

The above named defendants, John A. Knott, H. R. Oglesby and Frank A. Wightman, Railroad and Warehouse Commissioners, and Elliott W. Major, Attorney General of the State of Missouri, conceiving themselves aggrieved by the decree, rendered as of the 8th day of March, A. D. 1909, but signed, filed and entered on the 22nd day of March, A. D. 1909, as amended by the decree entered on the 17th day of April, A. D. 1909, in the above entitled cause do hereby appeal from said decree to the Supreme Court of the United States for the reasons specified in the assignment of errors which is filed herewith, and pray that this appeal may be allowed and that a transcript of the record, proceedings and papers upon which said decree was made, duly authenticated, may be sent to the Supreme Court of the United States.

And said defendants further show to the court that they have, in writing, notified the other defendants in said cause, except Charles M. Daily, who has departed this life, towit: Joseph M. Patterson, Charles E. Moss and George J. Dodd, and Hugh C. Gilbert, Edward L. Martin and Edward E. Axline, as successors respectively to said Joseph M. Patterson, Charles E. Moss and George J. Dodd, in the offices of the Judges of the County Court of said Jackson County; Arthur C. Warner and Overton H. Gentry, Jr., as successor to said Arthur C. Warner in the office of Treasurer of said Jackson County; William F. Davis, James F. Robb, F. M. Riley, R. E. Scearce and H. B. McIntyre of their intention to present this petition for an appeal, and have, in writing, invited said other defendants to join with them in such petition for an appeal, and that all of said other defendants have, in writing, accepted service of said notices and invitations, and have, also in writing, severally declined to join in said petition for an appeal, which said notices and invitations, acceptances,

declinations and proof of the death of said Charles M. Daily, are now presented to the court and filed herewith.

ELLIOTT W. MAJOR,
Attorney General;
JOHN M. ATKINSON,
Assistant Attorney General;
SANFORD B. LADD,
Counsel for John A. Knott, H. R. Oglesby and Frank A. Wightman, Railroad and Warehouse Commissioners, and Elliott W. Major, Attorney General of the State of Missouri.

Dated this 6th day of March, A. D. 1911.

The foregoing petition for appeal is allowed. Dated March 6th 1911.

(Signed) SMITH McPHERSON, *Judge.*

308 Afterwards, to-wit on the 6th day of March, 1911, a Bond for Appeal was approved and filed. Said Bond is in words and figures as follows, to-wit:—

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 2999.

THE QUINCY, OMAHA AND KANSAS CITY RAILROAD COMPANY, Complainant.

vs.

JOHN A. KNOTT, H. R. OGLESBY and FRANK A. WIGHTMAN, Railroad and Warehouse Commissioners; Elliott W. Major, Attorney General of the State of Missouri; Joseph M. Patterson, Charles E. Moss and George J. Dodd, Judges of the County Court of Jackson County, Missouri; Arthur C. Warner, Treasurer of Jackson County, Missouri; Charles M. Daily, William F. Davis and James F. Robb, and F. M. Riley, R. E. Scearce and H. B. McIntyre, Defendants.

Know all men by these presents: That we, John A. Knott, H. R. Oglesby, Frank A. Wightman and Elliott W. Major, as principals, and J. W. Perry and W. H. Seeger, as sureties, are held and firmly bound unto The Quincy, Omaha and Kansas City Railroad Company, in the sum of One Thousand Dollars ($1000) to be paid unto the said The Quincy, Omaha and Kansas City Railroad Company, its successors or assigns, to which said payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents.

Sealed with our seals and dated this 6th day of March, A. D. 1911.

This obligation is upon this condition:

Whereas, the above named John A. Knott, H. R. Oglesby,
309 Frank A. Wightman and Elliott W. Major have prosecuted their appeal to the Supreme Court of the United States to reverse the decree rendered, and entered in the above entitled cause by the Circuit Court of the United States for the Western Division of the Western District of Missouri;

Now if the above named John A. Knott, H. R. Oglesby, Frank A. Wightman and Elliott W. Major, shall prosecute their said appeal to effect, and answer all costs if they shall fail to make good their plea, then this obligation to be void, otherwise to remain in full force and virtue.

JOHN A. KNOTT. [SEAL.]
H. R. OGLESBY. [SEAL.]
FRANK A. WIGHTMAN. [SEAL.]
J. W. PERRY. [SEAL.]
W. H. SEEGER. [SEAL.]
ELLIOTT W. MAJOR. [SEAL.]

The above bond is hereby approved and ordered to be filed and made a part of the record.

(Signed) SMITH McPHERSON, *Judge.*

310 Afterwards, to-wit, on the 6th day of March, 1911, the following Order Allowing Appeal to defendants was filed and entered of record:

311 In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 2999.

THE QUINCY, OMAHA AND KANSAS CITY RAILROAD COMPANY, Complainant,

v.

JOHN A. KNOTT, H. R. OGLESBY and FRANK A. WIGHTMAN, Railroad and Warehouse Commissioners; Elliott W. Major, Attorney General of the State of Missouri; Joseph M. Patterson, Charles E. Moss and George J. Dodd, Judges of the County Court of Jackson County, Missouri; Arthur C. Warner, Treasurer of Jackson County, Missouri; Charles M. Daily, William F. Davis and James F. Robb, and F. M. Riley, R. E. Screace and H. B. McIntyre, Defendants.

Now at this day come the defendants, John A. Knott, H. R. Oglesby and Frank A. Wightman, Railroad and Warehouse Commissioners, and Elliott W. Major, Attorney General of the State of Missouri, and present their petition for an appeal to the Supreme Court of the United States from the final decree rendered herein, and also present an assignment of errors accompanying said petition, and

POOR COPY

at the same time make it appear to the satisfaction of the court that they have, in writing, notified the other defendants in this cause, except Charles M. Daily, who has departed this life, that is to say, Joseph M. Patterson, Charles E. Moss and George J. Dodd, and Hugh C. Gilbert, Edward L. Martin and Edward E. Axline, as successors respectively to said Joseph M. Patterson, Charles E. Moss and George J. Dodd, in the offices of the Judges of the County Court of said Jackson County; Arthur C. Warner, and Overton H. Gentry, Jr., as successor to said Arthur C. Warner, in the office of Treasurer of said Jackson County; William F. Davis, James F. Robb, F. M. Riley, R. E. Scearce and H. B. McIntyre; of their (the said petitioners') intention to present said petition for an appeal, and have, also in writing, invited said other defendants to join with them, the said petitioners, in said petition for an appeal, and that all of said other defendants have, in writing, accepted service of said notices and invitations, and have, also in writing, severally declined to join in said petition for an appeal, which said notices, invitations, acceptances, declinations and proof of the death of said Charles M. Daily, are now, by said petitioners, presented to the court; and it is thereupon ordered by the court that said petition for an appeal, said assignment of errors, said written notices, invitations, acceptances, declinations and proof of death be filed and made a part of the record in this cause, and it is further ordered that the interests of the defendants so presenting said petition for an appeal be severed in said appeal from the interests of the said other defendants herein, and upon consideration of said petition, the court now allows the same, and to the said defendants, John A. Knott, H. R. Oglesby, Frank A. Wightman and Elliott W. Major, an appeal to the Supreme Court of the United States from the final decree rendered in this cause in accordance with the prayer of said petition. And at the same time the said defendants present their bond for an appeal in the sum of One Thousand Dollars ($1,000) with J. W. Perry and W. H. Seeger as sureties thereon, which said bond is now approved by the court, and it is ordered that a certified transcript of the record, testimony, exhibits, stipulations and all proceedings herein be transmitted to the said Supreme Court of the United States.

Dated Kansas City, Missouri, March 6, 1911.

(Signed) SMITH McPHERSON, *Judge*.

312 Afterwards, to-wit, on the 6th day of March, 1911, an assignment of errors was filed. Said assignment of errors is in words and figures as follows, to-wit:—

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 2999.

QUINCY, OMAHA & KANSAS CITY RAILROAD COMPANY, Complainant,

vs.

JOHN A. KNOTT, H. R. OGLESBY and FRANK A. WIGHTMAN, Railroad Commissioners, et al., Defendants.

Assignment of Errors.

Now comes complainant and respectfully shows that the court in the proceedings and decree in the above entitled cause committed manifest error in each of the following respects:

1. In rendering and entering that portion of paragraph 5 of the original and amended decree reading:

"It is further ordered, adjudged and decreed that the defendants, or any of them, when the circumstances have changed so that the rates fixed as aforesaid shall yield to complainant reasonable compensation for the services aforesaid, may apply to this court by supplemental bill or otherwise, as defendants or either of them may be advised, for further orders in their behalf."

2. In rendering and entering paragraph 6 of the amended final decree reading:

"The taxable costs of the case including those covered by orders of the court, heretofore made or hereafter made on motion to
313 tax or retax, and including printing bill of Buxton-Skinner Stationery Company shall be paid as follows, to-wit: The one-half by complainant and the other half by defendants who are Railroad Commissioners and the Attorney General, to be recovered by execution to be issued by the clerk of this court upon application of any party in interest."

3. In not decreeing to be regulation of commerce among the states and invalid, of no force, and contrary to the provisions of section 8, article 1, of the constitution of the United States, each of the acts of the legislature of Missouri mentioned in paragraph 2 of the amended final decree; the purpose of this assignment being to make it a separate assignment of error as to each of said acts, the same as if it were separately written out and applied to each act.

4. In not decreeing that the rights, privileges and immunities of complainant were abridged, that complainant was denied the equal protection of the law and deprived of its property without due process of law, all contrary to the provisions of the fourteenth amendment to the constitution of the United States, by the state making and enforcing each of the legislative acts mentioned in paragraph 2 of the amended final decree; the purpose and intent hereof being to separately assign this error as to each one of said acts the same as if so separately written.

5. In holding that neither the freight act approved March 19, 1907, nor that approved April 14, 1905, nor that approved April 15, 1905, nor the passenger act approved February 27, 1907, nor the enforcement of either of them, directly affected interstate commerce.

6. In holding that neither the freight act approved March 19, 1907, nor that approved April 14, 1905, nor that approved April 15, 1905, nor the passenger act approved February 27, 1907, was discriminatory against complainant, or, as to it, violative of the fourteenth amendment to the constitution of the United States
314 when the act was upon its face general in its terms, applicable to all companies in the state, and the findings show that it is confiscatory as to each of the other companies in the state and as to complainant's competitors.

7. In holding that the passenger act approved February 27, 1907, was upon its face valid, whereas it was discriminatory and unreasonably classified companies according to mileage and according to ownership, control and occupation so that all roads in the state were arbitrarily required to charge two cents per mile, except those of less than forty-five miles in length, which were permitted to charge four cents per mile, provided they were not owned, leased, controlled or occupied by any trunk line, company or corporation.

8. In holding that the passenger act approved February 27, 1907, was on its face valid, when it was discriminatory and unreasonable, and classified the fares to be charged by providing half fare for children.

9. In holding to be valid upon its face the freight act approved April 15, 1905, whereas it was discriminatory and unreasonable in that it fixed rates to be charged by any individual or railway company, owning, operating, managing and leasing a railroad but applied the penalties only to railway companies or corporations.

10. In not decreeing to be void each of the acts of the legislature of Missouri mentioned in paragraph 2 of the amended final decree, for that the penalties were so enormous, unreasonable and severe as to be an attempt to coerce complainant to put them in and prevent it from having a judicial inquiry and review; all contrary to the fourteenth amendment to the constitution of the United States; the purpose being to make this a separate assignment as to each of said acts the same as if they were separately written out and applied thereto.

For all of which reasons the decree and holding of the
315 Circuit Court in such regard should be reversed.

FRANK HAGERMAN,
Solicitor for Complainants.

316 And on the 6th day of March, 1911, a petition for cross appeal was filed. Said petition for cross appeal is in words and figures as follows, to-wit:—

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 2999.

QUINCY, OMAHA & KANSAS CITY RAILROAD COMPANY, Complainant,
vs.
JOHN A. KNOTT, H. R. OGLESBY, and FRANK A. WIGHTMAN, Railroad Commissioners, et al., Defendants.

The above named complainant, conceiving itself aggrieved by the decree rendered and entered on March 22, 1909, as of March 8, 1909, as amended by the decree rendered and entered on April 17, 1909, at the November, 1908, term of court in the above entitled cause, does hereby apply for an appeal, and does appeal from such decree to the Supreme Court of the United States for the reasons specified in the assignment of errors filed herewith, and prays that this appeal may be allowed as a cross-appeal, and such steps taken to perfect the same as may be required by law, an appeal having already been prosecuted for the decree, and a transcript taken by the attorney general and railroad and warehouse commissioners, defendants in the cause.

FRANK HAGERMAN,
Solicitor for Complainant.

The foregoing petition for appeal is presented and allowed this March 6, 1911, by the undersigned Judge, who rendered the decree appealed from.

(Signed) SMITH McPHERSON, *Judge.*

317 Afterwards, to-wit, on the 6th day of March, 1911, a bond for cross appeal was approved and filed. Said bond is in words and figures as follows, to-wit:—

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 2999.

QUINCY, OMAHA & KANSAS CITY RAILROAD COMPANY, Complainant,
vs.
JOHN A. KNOTT, H. R. OGLESBY, and FRANK A. WIGHTMAN, Railroad Commissioners, et al., Defendants.

Bond.

Know all men by these presents that the Quincy, Omaha & Kansas City Railroad Company, as principal, and J. G. Trimble as

surety, are held and firmly bound unto the above named defendants in the full and just sum of two hundred and fifty dollars to be paid to said defendants, their heirs, executors, administrators or assigns, for which payment well and truly to be made, we bind ourselves, our successors, heirs, executors and administrators, jointly and severally by these presents.

Dated this March 6, 1911.

Whereas lately, at the November, 1908, term of the above named court, in the above entitled cause, a decree was rendered against said complainant, which has obtained a cross appeal to reverse the action of the court in the aforesaid suit and a citation directed to the said defendants citing and admonishing them to be and appear

318 in the supreme court of the United States at the city of Washington, District of Columbia, thirty days from and after the date of the said citation,

Now the condition of the above obligation is such that if the said cross appellant and complainant above named shall prosecute said cross appeal to effect, and answer all damages and costs if it fail to make good its appeal, then the above obligation to be void; otherwise to remain in full force and virtue.

QUINCY, OMAHA & KANSAS CITY RAILROAD CO., *Principal*,
By FRANK HAGERMAN,
Agent and Attorney.
J. G. TRIMBLE, *Surety.*

The above bond is hereby approved and ordered to be filed and made a part of the record this March 6, 1911.

(Signed) SMITH McPHERSON, *Judge.*

319 And on the 6th day of March, 1911, the following order allowing cross appeal was filed and entered of record, to-wit:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 2999.

QUINCY, OMAHA & KANSAS CITY RAILROAD COMPANY, Complainant,
vs.
JOHN A. KNOTT, H. R. OGLESBY, and FRANK A. WIGHTMAN, Railroad Commissioners, et al., Defendants.

Order.

This cause coming on for hearing this March 6, 1911, upon the application for an appeal by the complainant, together with its assignment of errors, an appeal is hereby allowed and bond for appeal is hereby fixed in the sum of two hundred and fifty dollars.

Inasmuch as this is a cross appeal, the clerk is directed to forward a transcript of all proceedings in the cause since the preparation and filing of a transcript of the record in the appeal taken by the defendants.

(Signed) SMITH McPHERSON, *Judge.*

320 Afterwards, to wit, on the 31st day of March, 1911, the following order was filed and entered of record:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

#2999.

THE QUINCY, OMAHA AND KANSAS CITY RAILROAD COMPANY, Complainant,

vs.

JOHN A. KNOTT et al., Defendants.

For good cause shown, that is, because the Clerk of said Circuit Court is unable to prepare a transcript of the record herein within thirty days from the date of the day of signing the citation herein it is

Ordered that the time for filing said record with the Clerk of the Supreme Court be, and the same is hereby, enlarged; and it is

Ordered that said record may be filed with the clerk of the Supreme Court on or before the first day of August, 1911.

(Signed) SMITH McPHERSON, *Judge.*

Dated Kansas City, Mo., March 31, 1911.

321 Afterwards, to-wit, on the 13th day of April, 1911, a Stipulation was filed. Said Stipulation is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 2999.

QUINCY, OMAHA AND KANSAS CITY RAILROAD COMPANY, Complainant,

v.

JOHN A. KNOTT et al., Defendants.

Whereas, John A. Knott, H. R. Oglesby and Frank A. Wightman, Railroad and Warehouse Commissioners, and Elliott W. Major, Attorney General of the State of Missouri, defendants in the above entitled cause, have been allowed an appeal therein to the Supreme Court of the United States.

And, whereas, the said Quincy, Omaha and Kansas City Railroad Company, complainant, has been allowed a cross-appeal herein to the Supreme Court of the United States.

And, Whereas, the said Railroad and Warehouse Commissioners and said Attorney General were, by said circuit court, allowed an appeal, and the Chicago, Burlington and Quincy Railroad Company was allowed a cross-appeal to the Supreme Court of the United States from a decree rendered by said circuit court in a cause then pending in said Circuit Court of the United States, wherein said Chicago, Burlington and Quincy Railroad Company was complainant, and said Railroad and Warehouse Commissioners and said Attorney General and others were defendants.

And, Whereas, the evidence offered, taken and received in the said circuit court in the above entitled cause is included in the transcript and printed record in said cause wherein the said Chicago, Burlington and Quincy Railroad Company was complainant.

And, Whereas, all of said evidence was for the purpose of the hearing in said Supreme Court of the United States of the
322 said appeal and cross-appeal in said cause wherein the said Chicago, Burlington and Quincy Railroad Company was complainant, printed, under the direction of the clerk of the Supreme Court of the United States and is contained in five printed volumes now on file in the office of the clerk of said Supreme Court in the causes therein pending, numbered 21821, wherein John A. Knott and others are appellants and the Chicago, Burlington and Quincy Railroad Company is appellee, and numbered 21837, wherein the Chicago, Burlington and Quincy Railroad Company is appellant and John A. Knott and others are appellees.

Now, therefore, in order to save the parties hereto the useless expense which would be incurred in the preparation of a complete transcript of the record and the evidence in the above entitled cause, it is stipulated and agreed between the parties hereto that upon the hearing in the said Supreme Court of the appeal and the cross-appeal in the above entitled cause, the evidence contained in said five printed volumes shall be taken and regarded as the evidence in the above entitled cause with the same effect as if it had been written out and certified in this cause by the clerk of the circuit court, and that the evidence contained in said five printed volumes, supplemented by a transcript of all the pleadings, papers, decrees and orders peculiar to the above entitled cause, shall be taken and regarded in said Supreme Court as a complete transcript of the record and proceedings in the above entitled cause, and that it shall not be necessary for the clerk of the circuit court to include in the transcript prepared by said clerk any evidence contained in said five printed volumes.

ELLIOTT W. MAJOR,
Attorney General, Solicitors for John A. Knott, Appellants.
FRANK HAGERMAN,
Solicitors for Q., O. & K. C. R. R. Co., Appellee.
FRANK HAGERMAN,
Solicitor for Q., O. & K. C. R. R. Co., Cross-Appellant.
ELLIOTT W. MAJOR,
Attorney General, Solicitors for John A. Knott et al., Cross-Appellees.

323 The opinion filed herein on the 14th of June, 1907, is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 3000.

THE WABASH RAILWAY COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendants.

And Seventeen Other Like Cases.

Remarks of Judge Smith McPherson, at Two o'clock p. m., June 14th, 1907.

Here are 18 cases, in which all the railways of the State ask to file supplemental bills in equity in the 18 cases, brought two years ago against the State officers to enjoin the enforcement of statutes of 1905 fixing rates. The charge was made that the rates were not remunerative but confiscatory, and therefore void by reason of the United States Constitution. Those cases were placed at issue and referred to a master. The evidence has been taken and the court is now advised that within a month or two the cases will be argued to the Master. So that after six months or more from now a final decree will be entered in this court. I do not speak of this delay in a spirit of complaint, or even criticism. I simply state the fact of delay. During the early part of this year the legislature of Missouri repealed part of the rate laws of 1905 complained of, enacted substitutes therefor and placed still other commodities under specific tariff rates, including passenger rates of two cents per mile.

Early in this week notices were given of an application to file supplementary bills, attacking the rates fixed in 1907, on the ground that such rates were confiscatory.

That this is a judicial question all informed people agree. That it is a question of gravity and almost supreme importance all recognize and by none more than by the courts. It involves the question of what are reasonable rates and how determined. It
324 involves the question of whether all the receipts for State business can be taken in their entirety, and if in the aggregate remunerative of whether the laws are valid. And it involves the question as to whether every person is entitled to have his product carried at reasonable rates instead of carrying some at unreasonably low rates and others at unreasonably high rates, and allowing the law to stand because the average is remunerative. And it involves the question of whether the State of Missouri is attempting to exercise the powers solely lodged in the Congress of the United

States. And there may or may not be involved the question of which is the more powerful with reference to these rates, the nation or the state.

I express no opinion as to some of these questions, on some of which I have a conviction and on others I do not even have a tentative opinion. But they are all judicial questions, and for the courts only, and in the end will be decided by the Supreme Court of the United States, a court in which every patriotic person has unbounded confidence. To that Court these questions in the end will go for decision.

As to whether these supplemental bills may be filed was set down for argument this morning at the opening of court. These rate statutes presumptively are valid, and if valid went into effect at midnight last night. Seeing the gravity of the situation, this court on yesterday, on its own motion, on inspecting the proposed supplemental bills, entered a restraining order, restraining the railways from carrying out the recent statute until the matters could be heard, as to filing the supplemental bills on which, if filed, a temporary injunction should issue. At the morning hour of this day, the Assistant Attorney General of the State appeared and stated that the Attorney General could not be here until to-morrow morning. It was also at that time made to appear that on the morning of this day suits were filed in the state courts at St. Louis and Kansas City, and a temporary mandatory injunction had been issued by the state courts, commanding the railways to recognize as valid and carry out the statute of 1907.

325 All courts, state and federal, recognize the delicacy of real or seeming conflicts between the courts. All courts recognize that all other courts act in good faith. And this court appreciates the situation. It is a question worthy of argument and deliberation.

When the foregoing situation was disclosed this morning counsel for the railways moved for a continuance for a week or ten days, to the end that the situation might be looked into. This motion will be overruled, and all these matters are set down for hearing at two o'clock to-morrow afternoon. These delays cannot be allowed. The interests of the public and the railways alike demand the speedy determination of all questions connected with the foregoing statements as well as all questions connected with the validity or invalidity of the rate statute recently enacted by the state legislature of Missouri. At the time named I shall expect counsel on both sides to be ready to proceed in argument, as well as to move for such other proceedings as may be deemed proper. All of which is so ordered.

326 On the 17th day of June, 1907, an Opinion was filed. Said Opinion is in words and figures as follows:—

In the Circuit Court of the United States, Western District of Missouri, at Kansas City.

THE WABASH RAILWAY COMPANY
vs.
HERBERT S. HADLEY, Attorney General and the State Railroad Commissioners.

And Seventeen Other Like Cases.

Remarks of Judge Smith McPherson, Monday, June 17, 1907.

These cases were argued on Saturday and taken under advisement until this time. The situation is such that I must decide the questions today. Limited as the time has been, I have an abiding conviction of what should be done even if the reasons therefor may not be stated with the fullness that the importance of the matters requires. I have been much aided by the arguments, which were strong, eloquent and powerful, by counsel representing both sides, and as it seems to me, every phase of the questions was so illuminated by the arguments that all possible questions are at an end of debate.

The real question here is, has this court jurisdiction over the passenger fare law of 1907 of the Missouri Legislature by which it is declared that the legal fare be two cents per mile. A question connected with that is, whether the bills rendered are supplemental bills to those filed in the eighteen cases two years ago to enjoin the enforcement of the freight tariff law of 1905 now pending before the Master.

A supplemental bill usually is where there has been some change in the rights or status of the parties which must be carried forward by a supplemental bill. And usually when a supplemental bill is thus allowed, matters can be brought in which could have been covered by an amendment to the original bill. These discussions as to supplemental bills, as well as to other bills, are exceedingly technical. It seems to me that the test is not so much in the way
327 a pleading is styled, as what the allegations of the pleading are. Formerly, discussions as to various bills in equity gave rise to great delay, the results being that years and years would elapse before a chancery case could be concluded. Looking back at those old discussions, it now seems to have been a folly to thus waste the time and energies of the judges and of counsel in determining these technical questions. Such must have been the belief of the Supreme Court when a code of Rules in Equity were established, the purpose no doubt being to get rid of the old technicalities which served no useful purpose. By the adoption of the Rules in Equity, we have a system of fact pleading, covering almost every phase of equity pleading and practice; and it is only when some question of practice is not covered by the rules, that we go back to see what the practice of the High Court of Chancery in England was, and then not as positive rules, but as furnishing just analogies. Rule 90 thus

providing was adopted in the year 1842, and the Supreme Court has decided that when we go to the English Chancery practice, we must take the practice as it existed in England in 1842, when this rule was adopted. By Rule 57 it will be seen that the supplemental bill is allowed when any material event has happened after the filing of the original bill. In 1905 the Legislature of Missouri enacted a maximum freight tariff statute as to several commodities. The railways contested the validity of that statute in the eighteen actions above referred to, and these actions are still pending. By the act of 1907 the Legislature declared that all railways should charge but two cents per mile per passenger. It seems to me that this is an event happening since the institution of the original suits, and an event that is germane to the original controverted questions.

But I do not deem it of much importance to determine whether the pleadings tendered for filing are supplemental bills, or whether they are original bills.

On Tuesday, the 11th inst., the complainants gave notice of filing these bills on Friday, the 14th inst. On Thursday, the 13th
328 inst., the railway companies asked leave to file them. Solely out of courtesy to the Attorney General, who was not then present, this was refused, but the Court on its own motion issued restraining orders to keep the matters in status quo. At the time fixed, Friday the 14th inst., the matter was again delayed for a day at the request of the Attorney General, he still being absent. And on that day bills were filed in the state courts at Saint Louis and Kansas City, the purpose being, as it is said, to bring about the enforcement of this statute in question. And the argument now is, that as these cases were filed in the state courts on Friday the 14th inst., the day before the arguments were had in this court, that the same subject matter was pending in the state courts, and that the state courts would take jurisdiction to the exclusion of this court, the cases being there first pending. But the above statement of facts shows that the cases were pending in this court from Tuesday the 11th inst. and that orders were made on Thursday the 13th inst., the day before the cases were lodged in the state courts. If these matters could not be covered by supplemental, they could be covered by original bills, and they were presented prior to the institution of the cases in the state courts. It is not material whether these supplemental bills so-called are full and complete as original bills. Defects could be cured upon exceptions or demurrers, or by complainants on their own motion before the filing of an answer. Nor is it material whether these pleadings are filed in the original cases or separately docketed; because if separately docketed, they will at once for trial purposes be consolidated with the old cases pursuant to Section 921 of the Revised Statutes. And whether the contention of counsel for the state officers be technically correct or not, the contention is without substantial merit as to the rights of the parties. These pleadings should be filed and regarded as having been filed on Tuesday, the 11th inst.

The fixing of rates by the Legislature is presumptively correct and the Railway Companies have the burden of proof of showing

that the statute is not remunerative. That the fixing of rates is a legislative act, all agree. But that such rates must be reasonably remunerative, cannot longer be discussed. The railways are entitled to cost and a reasonable profit, and no fair-minded man dis-
329 puted it. How to arrive at the cost and a reasonable profit, is a most difficult problem. But if the statute is challenged, it must be ascertained, and this ascertainment can only be by judicial proceedings, and must be determined by the courts, and ultimately by the Supreme Court of the United States. No skill of the draughtsman by the use of words or phrasing can take this question from the courts. It can never be settled in a criminal case by arresting ticket agents and conductors. The Supreme Court in the end must have the evidence with the right to make the ultimate findings of fact. There is but one orderly and seemly way, and that is in equity with the right of appeal to the Supreme Court, as has been said by that court over and over again. All contentions that the courts of the state can decide these questions as well as can the United States Courts, is not a question for argument because it is a question of jurisdiction, and in my judgment, in these cases this court has jurisdiction, and having jurisdiction, the jurisdiction should be exercised.

There seems to be much feeling in the minds of many as to where these cases should be adjudicated, but why the feeling I do not understand. And yet I recall the historical facts that at various times since the organization of this government, the feeling has run high as to whether the federal or state courts should adjudicate matters of importance to the public. No one doubts that the states have a right to manage their own local affairs, and to have matters growing out of their own local affairs determined by their own courts. But it is too late to seriously complain because the United States Courts take and exercise jurisdiction under the constitutional provision providing for the courts, and the enactments thereunder. The United States Courts, regardless of the citizenship of the parties, will take and exercise jurisdiction in actions of a civil nature when the provisions of the United States Constitution are invoked, as has been done in this case. The Constitution provides for this, and Congress has provided the procedure. The Commerce Clause of the United States Constitution has been invoked, as is the Fourteenth Amendment. These are national questions, and the Supreme Court will hold the scales of justice with the evidence before it, and why there should be any excitement or feeling about this, is beyond my com-
prehension. I do not know, and of course do not state, that
330 the State Legislature has wronged these railways, because that is the question to be decided when deciding the merits of the case. The railways say that they are being wronged, and they should have a hearing, and the hearing should be on the evidence, and that evidence carried in the record to the Supreme Court. And if upon the evidence the railways are being compelled to transact business at a loss, no one ought to doubt but that the Supreme Court will hold the statute void. If the rates fixed are remunerative, no one ought to doubt but that the statute will be upheld. It is too

late to talk about the alleged wrongs of the Supreme Court declaring statutes void. That question was fought out one hundred years ago, and from the organization of the Supreme Court down to the year 1888, being the period covering the first one hundred years of the United States Supreme Court, that court held twenty United States Statutes void. During the same period that court held one hundred and eighty-one state statutes void, of which fourteen were Missouri statutes. (See Appendix to Volume 131 U. S. Reports.) How many statutes have since been declared void by that court, I have not taken time to ascertain. Some of the statutes thus declared void were railway rate statutes enacted by the states.

These questions are of the greatest importance. There are many complications arising. Much is to be considered besides the mere rates or fares. There must be equality of rates, the treatment and charging of all alike. No rebates; no discriminations must be allowed. Safety of the public, including passengers and employés, must be considered. And as of much importance as any other question, if not the greatest of all, is the question of efficient service. Rapid and prompt delivery of freight must be had. Fast passenger trains with but few stops, for passengers going a considerable distance, are demanded. Local trains for local passengers, are required. To have such efficient service, reasonable compensation must be paid. All these questions are involved in the fixing of rates. Between the cities of Saint Louis and Saint Joseph, one line of railway is wholly within the state, while another and competing line a part of
331 the distance is within the state of Kansas. A like situation exists between Kansas City and Saint Joseph, and another like situation exists between Kansas City and Joplin. Possibly there are other like situations. In the case of Hanley vs. R. R., 187 U. S., the Supreme Court decided that a railway connecting two points within the state, and doing business between the two points, but with a line outside of the state a part of the distance, was engaged in interstate commerce controllable only by enactments of Congress. What about the Missouri statute fixing rates over the one line wholly within the state as against a competing line a part of the distance outside of the state? I do not intimate the conclusion, but that there is a question, can not be doubted. And if the statute is void in part, is it separable, leaving the valid parts to stand with the void parts eliminated? I simply mention these questions to show the gravity and importance of these cases without in the slightest degree intimating the conclusion, often discussed by men of great ability, but upon which as yet there has been no conclusion reached, so far as I know, by any of the courts.

It is urged with much plausibility that by reason of the case of Fitts vs. McGhee, 172 U. S., that because penalties are affixed to the Statute of 1907, that the criminal courts of the state only can take jurisdiction. I do not stop to review the various Missouri Statutes upon the subject of both passengers and freight, all of which must be considered as in pari materia; but it is sufficient to say that the inflicting of penalties is not the only remedy. The Attorney General and Railroad Commissioners still have much to do with the enforce-

ment of these statutes which the railways contend are void in part. These matters were considered, and a conclusion reached adversely to the contention of the officers of Missouri, by the Supreme Court of the United States, sustaining Judge Philips when presiding in this court, and reversing the Supreme Court of Missouri, R. R. vs. Missouri R. R. Commissioners, 183 U. S. 53. As I understand in the original eighteen cases now pending in this court, the question was and is, whether all the earnings in the aggregate are remunerative. That theory being, I suppose, by reason of the case of Smythe vs. Ames, decided by the Supreme Court, and the question is still present under the General Statutes of Missouri, the Statutes of 1905, and the Statute of 1907 in question. The time is not far distant
332 when the question will be raised, and possibly in these very cases, as to whether the statutes can stand, if some rates are too high, if the rates within the state in the aggregate are remunerative. The question will arise whether one person can have less than reasonable rates, and another be compelled to pay more than reasonable rates. Will it be a sufficient answer to say that in the aggregate the rates are remunerative? Or is that a question only between the individual and the railway company? Upon this question I intimate no ruling, but the importance of the question can not be overestimated.

These cases will be set down for hearing. The orders heretofore made will stand except as now modified. The two cent passenger fare statute should be put in force, and kept in force for some months with the rights of the railways later on to renew their motions to enjoin the enforcement of the statute. One class of people claim that with the two cent fare travel will so increase as to make it remunerative. Others deny this. The Wisconsin Commission but lately declared, after months of investigation, that in that state a two cent passenger fare would be confiscatory. Governor Hughes, by a recent veto message, so declared as against an enactment providing for the two cent fare in the populous state of New York. It may be that what will be reasonable rates in parts of Missouri on one line, will be unreasonable in another part of Missouri on another line. How can these questions be determined? Is it not at present all speculation and guesswork? Of what value will be the testimony of an ordinary business man testifying by way of opinion? And of what value will be the testimony of railway experts giving opinion and illustrating his opinions by the use of many figures? Experience over a reasonable period of time ought to, and no doubt will, settle these questions, at least for the time being, although what may be a reasonable remuneration one year, may be unremunerative five years hence. The Supreme Court of the United States in Smythe vs. Ames, referred to, took care of that question by keeping it open with the right to open up the case from time to time as circumstances required.

Therefore the orders will be that this court retains jurisdiction of these cases regardless of whether the pleadings tendered are consid-

ered as supplemental bills or original bills, and no order will
333 be made for some months with reference to the two cent fare statute, leaving it for the time being operative and as though in full force.

334 On the 17th day of June, 1907, an Opinion was filed. Said opinion is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

THE WABASH RAILWAY COMPANY
vs.
HERBERT S. HADLEY, Attorney General, and Other State Officers, and Seventeen Other Like Cases.

Remarks of Judge Smith McPherson, June 17th, 1907.

The real question here is, has this court jurisdiction over the passenger fare law of 1907 of the Missouri legislature declaring it unlawful to charge more than two cents per mile? A lesser question is whether the bills tendered for filing are supplemental bills to those filed in this court in the eighteen cases two years ago and now pending before Mr. Schofield, the Master.

I fully appreciate the responsibility resting upon me and the consequences to follow from the orders now to be made. If mistaken the mistakes are mine, even though I have had but part of one day since the argument to reach these conclusions. Never has a case before me been argued with greater eloquence, logic and power than was done by counsel both for the state officers and the eighteen railways. Every phase of the case direct and collateral has been so illuminated that all possible questions are at the end of debate. What is the supplemental bill in equity? And wherein is the importance of defining it? Usually it is where there has been some change in the rights of the parties, which must be carried forward by a supplemental bill. One hundred and more years ago judges who had but little to do except play the role of mental acrobats and seek to refine and distinguish and to display an affected learning, and to discuss most gravely "the difference betwixt the west and northwest side of a hair" most elaborately set forth their views, as to
335 original bills and amended bills and supplemental bills, and bills of review, and bills in the nature of bills of review. The result was that a chancery case lasted for many years. More than fifty years ago the Supreme Court recognized the folly of much of this, and by a code of rules adopted the system of fact pleading and left the old chancery practice in force only when the 94 rules adopted did not meet the situation that might arise, and by rule 57 defined a supplemental bill. But that is not important in my judgment. Whether this proceeding should be by original bill, or by supplemental bill is of small consequence. If by original bill, the railways had the right to file the same without notice, and the right to a re-

straining order without notice. If by supplemental bill the usual practice is to require notice. And in either case it is discretionary with the judge to allow a restraining order without notice until a hearing can be had on notice as to a temporary injunction. On Tuesday the 11th instant, the complainants gave notice of filing these bills on Friday the 14th instant. On Thursday they asked to file them. Solely out of courtesy to the Attorney General, who was not present, this was refused; but the court on its own motion issued the restraining order, to keep the matter in statu quo. At the time fixed for the hearing the matter was again delayed for a day at the request of the Attorney General, he unavoidably being absent. During that delay the bills were filed in the State Courts. For this there is no criticism. But I have stated the facts, and the statement of facts shows that these cases, as to the laws of 1907, were pending and had been pending since Tuesday the 11th instant. And these bills must be considered as filed as of that date. And whether defective as original bills is not material, because such defects can be corrected on demurrer or exceptions, or by the complainant before answer as of course. Nor is it material whether filed in the original cases or separately docketed. If separately docketed, they will at once for trial purposes be consolidated with the old cases, pursuant to Section 921 of the Revised Statutes. If the contention of counsel for the state officers be technically correct, it is without substantial
336 merit as to the rights of the parties.

That the fixing of rates by the legislature is presumptively correct, all concede. That it is a legislative act, all agree. But that such rates must be reasonably remunerative, cannot longer be discussed. The railways are entitled to cost and a reasonablt profit, and no fair minded man disputes it. How to arrive at the cost and reasonable profit is a most difficult problem. But it must be ascertained and this ascertainment can only be by judicial proceedings, and to be determined only by the courts and ultimately by the Supreme Court of the United States. No skill of the draftsman by the use of words or phrasing can take that from the courts to the town meeting. It cannot be changed by declamation, either sophomoric or by invective. It can never be settled in a criminal case by arresting ticket agents or conductors. The Supreme Court in the end must have the evidence, with the right to make the ultimate findings of fact. No local tribunal, Federal or State, can foreclose the fact as would be done if the case goes to the Supreme Court on writ of error to the State courts, and from the State courts there is no method of review but by writ of error. There is but one orderly and seemly way, and that is in equity, with the right of appeal to the Supreme Court as has been said by that court over and over again. The argument that the courts of the State can decide as to the validity of the laws of the State as well as can the United States courts will not be argued by any Federal judge, but will be conceded. Those courts are as high minded and as learned as are the Federal courts, but that is not the question. It is a question of jurisdiction. And this court has jurisdiction and will maintain its jurisdiction. Nor is this to the prejudice of anyone. As I listened on Saturday to the argument,

I was carried back to the days of 1801-9. I recalled the judicial revolutions of Virginia and Pennsylvania. I recalled the case of Luther v. Borden, growing out of the Dorr rebellion. I recalled the bitterness of half a century ago between Iowa and Missouri over the
337 State line. I recalled the recent lives of Thomas H. Benton and Gouvernor Morris by a distinguished author who states that at one time or another every one of the original thirteen states has tried in some form or other to destroy this government. And I recalled that in every instance, save the troubles of 1861-5, that the United States Courts have, in a dignified way, settled the disputes and law-abiding people acquiesced and the lawless element were compelled to submit.

That the States have the right to manage their own local affairs will ever be maintained. But it is too late to talk about states dictating to the Government, or to riding down its courts. This is a Nation. Its commerce will not be interfered with by any State, because for that almost alone we adopted our Constitution. The Commerce Clause will always be upheld, and the rights of the citizen, including corporations, will ever be protected in their just rights under the Fourteenth Amendment. These are National questions, and the Supreme Court will hold the scales of justice with the evidence before them. I do not know and of course do not state that the State legislature has wronged these railways. That is the case on its merits. But the railways say they are being wronged, and they must have a hearing, and a hearing on the evidence, and that evidence carried with the record to the Supreme Court. And if upon the evidence they are being compelled to transact business at a loss, no one need doubt but that the Supreme Court will nullify the Statute. If the rates fixed are remunerative, the statutes will be upheld. It is too late to talk about the alleged wrongs of the Supreme Court declaring statutes void. That was fought out one hundred years ago. Down to 1888 the period covering the first 100 years of the United States Supreme Court, that court held twenty United States statutes void. During the same period that court declared as void 181 state statutes, of which 14 were Missouri statutes. (See Appendix to Vol. 131 U. S. Rep.) How many have since been declared void I have not taken the time to ascertain. And some of the statutes thus declared void were railway rate statutes, enacted by the states.
338 It must be remembered that in passenger and freight carrying there is much to be considered besides rates or fares. Important as any, if not the most important, is the equality of rates; the treatment and charging of all alike. No rebates; no discriminations, must be allowed. Safety of the public, including passengers, and employés, must be considered. And of as much importance as any other question is efficient service. Rapid and prompt delivery of freight must be had. Fast passenger trains, with but few stops, for passengers going a considerable distance, *is* demanded. Local trains for local busniess *is* required. To have these reasonable compensation must be paid. So that these questions are all involved. And in consequence such business as is between St. Louis and St. Joseph, Kansas City and St. Joseph, Kansas City and Joplin and perhaps

other points, where parts of the routes of some of the lines are out of the State, a grave question is presented, and no small question is covered whether parts of these statutes are void that the matter can be separated and the balance of the statute remain in force, because Congress, even as to those lines wholly within the state, may or may not have control of such commerce when it directly interferes with commerce passing out of and back into the state. I neither pass upon this question nor express an opinion thereon, because while such questions have frequently been discussed by the ablest of men, such questions have not yet been decided. I simply mention it as a great National question.

It is urged with much plausibility that because penalties are affixed to the statutes of 1907 that the criminal courts of the state only take jurisdiction. I do not stop to review the various Missouri statutes upon the subject of both passengers and freight, all of which must be construed as in pari materia. But it is sufficient to say that the inflicting of penalties is not the only remedy. The Attorney General and Railroad Commissioners still have much to do with the enforcement of these statutes, which the railways contend are void in part. In the original cases the question was whether all the earnings in the aggregate were remunerative.
339 That question is still present under the statutes of 1907. Whether these laws by raising the freight rates and lowering the passenger fares are remunerative in the aggregate must be considered by the court. The State is not in effect a party, because the charge is that these officers are seeking to enforce void statutes, in more ways than by inflicting penalties.

The orders heretofore made will stand until vacated or modified. The cases will be set down for hearing as to whether a temporary injunction shall issue? and if issued what shall be the scope? Shall they restrain the enforcement of the recent freight rate statute? Shall they restrain the enforcement of the recent two cent passenger rate statute? Tentatively, subject to argument, and subject to change of opinion, if I should hear the cases, my present view is that the two cent passenger fare statute should be put in force and kept in force for some months at least, with the right of the railways later on to renew their motions to enjoin the enforcement of the statute. One class of people claim that with a two cent fare travel will so increase as to make it remunerative. Others deny this. The Wisconsin Commission but lately declared after months of investigation that in that State a two cent fare would be confiscatory; and Gov. Hughes by a recent veto message so declared in the populous state of New York. How is this question to be determined? Is it not all speculation and guess work? Of what value will be the testimony of an ordinary business man? And of what value will be the testimony of railway experts?

Such are my present views, hurriedly stated and without time to place them in the shape of a formal opinion. Nor would it be of substantial benefit to anyone to review the many authorities. They are known to the profession and to the courts. But I have stated what the law is as I understand it to be.

340 On the 31st day of March, 1908, an Opinion was filed. Said Opinion is in words and figures as follows:—

In the Circuit Court of the United States in the Western District of Missouri.

No. 2988.

THE SAINT LOUIS & SAN FRANCISCO RAILROAD COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General, and Others, Defendants.

And Seventeen Other Like Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3004, 3005, 3006.

Frank Hagerman and others for Complainants.
Herbert S. Hadley, Attorney General.
John Kennish, Assistant Attorney General.
F. W. Lehmann and S. B. Ladd, for Defendants.

Opinion.

SMITH MCPHERSON, *Judge:*

Here are eighteen cases, brought by as many railway companies of the state, against the Attorney General, Railroad Commissioners of the State, County Judges, county Treasurer and shippers.

The purpose of the bill in each case, is to enjoin the enforcement of state railway rate statutes on the ground that the rates thus fixed by legislative enactment, are not remunerative, but are confiscatory. The original bill of complaint in each case was filed in 1905 assailing an Act approved April 15, 1905 fixing rates. In June of that year temporary injunctions were issued. In December of that year answers were filed, and on defendant's motion the cases were referred to a Special Master before whom the cases are still pending.

That statute was enacted in lieu of certain sections of the Revised Statutes of the State.

In 1907 the Legislature enacted a statute which was approved March 19, 1907. This statute after referring to the one of
341 1905, declared that the same "be and hereby are repealed, and the following to be known as sections 1194, 1194*a*-1, 1194*b*-1, and 1194*c*-1 of said Revised Statutes, are enacted in lieu thereof."

Then follow four sections designated as above.

By still another statute passenger fares were fixed at two cents per mile, theretofore three cents per mile.

In June 1907 each company filed another bill, concerning which see the opinion by this Court in this case in 155 Federal Reporter 220. Since that time the cases have been pending before the Master,

the delay occasioned in part at least by an awaiting of a decision of the Supreme Court in what are known as the Minnesota and North Carolina cases. This Court declined to grant a temporary injunction as to the passenger rates, but granted such writ as to the freight rates. Both statutes of 1907 provide for penalties for a violation of the enactment, and expressly recite that any liability or penalty incurred under the statute of 1905 may still be enforced It is now claimed that the original cases are at an end because the statute of 1905 has been repealed. The Court cannot so hold. As has been noticed for the statute when repealed, there was a substitute enacted. One rate was cut out and another fixed, with the penalties under the prior statute remaining. This does not overthrow the original cases. They are rightfully pending with part of the subject matter still in existence, and a new alleged grievance in place of the old. This new grievance, if one, should be brought forward by a supplemental bill that being the office of such a bill.

Two shippers on each road are made defendants. That it is proper to make them parties cannot be in doubt, as they have a direct interest. Whether a decree herein will be binding on other shippers, is a question not now for decision. And that the County Judges and Prosecutors have to do with these laws is plain. But these matters are exceedingly technical. The real question as to parties, is as to making the Railroad Commissioners and Attorney General parties defendant. As to the right to make the Attorney General and the Commissioners parties defendant, is a question that has been argued for and against with much earnestness and by the citation of many authorities.

342 At common law the office of Attorney General was the highest law office of the Crown. He represented the Crown in all legal matters and was the responsible officer as to the legal duties and prerogatives, appearing in the courts of record and the House of Lords in all matters affecting the public, to the end that justice might be done in the name of the King. The duties of that office are not less in this country, and the specific mention of many things that he must do in behalf of the public and the State are not to be regarded as exclusive in the full performance of his duties.

The Constitution and Statutes of Missouri make special mention of many things that he is required to do. He is upon a salary, and cannot receive fees. He is a member of the State Board of Equalization and of Education, as well as other Boards. He prosecutes suits on official bonds. He prosecutes railroads for refusing to grant proper rates to shippers. He must appear before the Interstate Commerce Commission when residents of the state are being wronged. He asks for, and receives, the aid of additional counsel. He sees to the enforcement of the banking laws, and proceeds against express companies and railroad companies and looks after forfeitures. These and a great many other things he is specifically required to do And the importance and dignity of his office are such, that in most instances he is relieved from making oath to papers that he is permitted or required to file. And then out of apprehension that because certain things are specifically mentioned, that the conclusion would

be arrived at by construction that all other matters were excluded, Section 4943 of the Revised Statutes was adopted, requiring that officer to institute and prosecute all suits and other proceedings at law and in equity requisite or necessary to protect the rights and interests of the state and to enforce any and all rights, interests or claims of the state against any and all persons and corporations.

343 It would seem that from the foregoing there could be no doubt but that it is the duty of the Attorney General to enforce the statutes in question presented by these cases, if valid, not only by virtue of the duties pertaining to that office by common law, but as well by the statutes just alluded to.

But there is a further statute which counsel on both sides have overlooked. Chapter I of the Laws of 1907 by Section 61 thereof eliminates all doubt by appropriating twenty thousand dollars per year to be drawn by the Attorney General from time to time

"which said sum shall be expended under the direction of the attorney general in the prosecution or defense of suits heretofore brought, or that may be brought by or against any railroad company, wherein the validity of any act of the general assembly may become involved or contested."

It will be noticed that this appropriation of this large sum of money is made not only to the end that the attorney general may seek to maintain the validity of any statute brought in question by any case hereafter brought, but likewise covers cases heretofore brought. And in the light of that section appropriating forty thousand dollars for the biennial period of two years, to be drawn by the Attorney General and expended under his direction, leaves no room for argument that it is the duty of the Attorney General to enforce all statutes enacted by the General Assembly and see to it to the best of his ability that no court by decree or judgment holds the state enactments void.

Without scheduling the different statutes, the duties of the Commissioners are likewise plain. They are vested with authority to fix rates, and should the statutes in question be overthrown as being void, they will at once fix some other rate in their judgment valid. The question as to making the Commissioners parties defendant has been put at rest by the case of the Commissioners vs. R. R. 183 U. S. 53.

Again, as when the cases were brought, and first argued, it is urged that the state in effect is being sued in violation of the Eleventh Amendment, and the question has again been argued

344 with force, logic and eloquence. That a determined effort has been made by the use of words, phrasing and forms within the past two years, regardless of substance, effect and meaning, by the states to deprive the United States Courts of jurisdiction vested by the Constitution and laws enacted by Congress, is known by all The argument is to the effect that all litigation of and concerning the fairness, and validity as well, of state statutes shall be in the courts of the state whose legislation is assailed, leaving the right and the

only right of carrying questions of law to the United States Supreme Court by writ of error, but likewise insisting that in cases as to the reasonableness of rates, dependent wholly upon facts, that a writ of error shall be unavailing, and that the state courts of the state whose state legislation is assailed, shall alone and finally decide the case. And that this will be so in a chancery case as well as in an action at law by the only remedy, by writ of error to a State Supreme Court, when the case depends upon questions of fact, has been held by the Supreme Court in Egan vs. Hart, 165 U. S. 188. There are others who believe that all matters both of fact and law arising under the Constitution of the United States should in the end be decided by the only court created for that purpose. So it is that a sharp conflict is presented. Almost from the beginning of our government this question at short recurrent periods has arisen, but generally concluded by the Supreme Court holding that this is a National government with a National Judiciary, and that the National Constitution is and shall forever remain the supreme law of the land, anything in the laws of any state to the contrary notwithstanding. When our government was organized, every of the thirteen states was in debt, and some of them well nigh hopelessly so. In and out of both the National and State Conventions the arguments were for and against whether a state could be sued in a National Court. Hamilton and Marshall and Madison said it could not be done. Patrick Henry with his numerous doubts and opposition was filled with fear. Others like James Wilson and Edmund Randolph said the state would and ought to be suable by a citizen of another state for wrongs
345 done. Near the end of Washington's first term, the famous suit of Chisholm vs. Georgia was decided, the holding being that Chisholm, a citizen of South Carolina, could recover judgment for money that the State of Georgia justly owed him.

It is said that within two days from that decision, a resolution was offered in the Senate to amend the Constitution to prevent such suits, by declaring that the Judicial power shall not extend to any suit against a state by a citizen of another state. But that failed because it was urged that notwithstanding the decision in the Chisholm case, such jurisdiction had never extended nor existed. Thereupon new phrasing was adopted, and a new resolution was offered, reciting that "The Judicial power of the United States shall not be construed to extend to, etc.," shortly ripening into the Eleventh Amendment. The only purpose of that Amendment was to prevent a state from being sued by its creditors, and history furnishes the proofs conclusive of the correctness of the statement. Those who are doubtful of this need only read what Chief Justice Marshall said in Cohens vs. Virginia (6) Wheaton.

At common law from time immemorial, a public officer was not allowed to justify under a void law or void order, but was compelled to make restitution of the property taken or to pay damages therefor. And such has been the uniform holdings in this country, and for the reasons that a void statute or void order is utterly without effect and is wholly unavailing as a defense. Such has been and is the law of England, and such has been and is the law of this country.

And why such should not be the law on the equity side of the docket by preventative remedies against threatened wrongs, is difficult to conceive.

But the Supreme Court has held in the cases of In Re Ayres, 123 U. S. 443, and Fitts vs. McGhee, 172 U. S. 516, that in cases wherein the state as a state is affected, that a suit against the officers is in effect one against the state in contravention of the Eleventh Amendment.

It is to be noted that both the cases above referred to would
346 have been decided as they were decided, if taken to the Supreme Court by writ of error to a State Supreme Court, or by appeal from a Circuit Court, if the Eleventh Amendment had never been adopted. This is so because in the Ayres case a full, adequate and complete remedy at law existed, and in the case of Fitts vs. McGhee the sole purpose was to enjoin criminal proceedings. But it is now too late to object to the jurisdiction of a Circuit Court to enjoin the enforcement of a rate statute alleged to be void because confiscatory, although concededly the holdings now are that the test is not whether the state is a party to the record by name, but is the state in effect a party?

But in the case at bar the state as a state has no interest. And the state as a state is not attempting to confiscate property. It is the government of the state, first by its legislature, and then by its officers, who according to the allegations of the railways, are attempting to confiscate property. Whether such acts will amount to confiscation if carried out, relate to the case on its merits. But the point to the whole matter is, that the state is not seeking to act, and no effort is made to enjoin the state, either by name or in effect. And this distinction is not metaphysical, but is a substantial distinction, clearly and unmistakably pointed out by Justice Matthews in Poindexter vs. Greenhorn, 114 U. S. 270, *290,* wherein he said:

"In the discussion of such questions, the distinction between the government of a State and the State itself is important, and should be observed. In common speech and common apprehension they are usually regarded as identical; and as ordinarily the acts of the government are the acts of the State, because within the limits of the delegation of power, the government of the state is generally confounded with the State itself, and oftener the former is meant when the latter is mentioned. The State itself is an ideal person, intangible, invisible, immutable. The government is an agent, and, within the sphere of the agency, a perfect representative, but outside of that, it is a lawless usurpation. The Constitution of the State is the limit of the authority of its government, and both government and
347 state are subject to the supremacy of the Constitution of the United States, and of the laws made in pursuance thereof. So that, while it is true in respect to the government of a State, as was said in Langford vs. United States, 101 U. S. 341, that the maxim, that the king can do no wrong, has no place in our system of government; yet, it is also true, in respect to the State itself, that whatever wrong is attempted in its name is imputable to its government, and not to the State, for it can speak and act only by law, whatever it does say and do must be lawful. That which, therefore, is unlawful

because made so by the supreme law, the Constitution of the United States, is not the word or deed of the State, but it is the mere wrong or trespass of these individual persons who falsely speak and act in its name."

So that it follows that the State of Missouri is not a party either by name, nor in effect. And this Court has jurisdiction both of the subject matter and of the parties, to inquire into the questions in the case and on a final hearing decree whether the rates fixed by statutes are remunerative or confiscatory.

On what basis the Master shall report, is not clear. Every person whether a passenger or shipper, is entitled to have efficient service at reasonable rates, which the company must give for such compensation. Whether such charges for every person can be fixed by a decree, is doubtful, and in any event will be attended with much difficulty. But if all earnings in the state for state business are to be taken in the aggregate, less expenses, the question is attended with difficulties, because of the matter of expense, it being difficult to apportion the expenses between the state and interstate business.

If the parties cannot agree, the Master should be directed by a supplemental order.

These cases should be brought to a final decree, and that decree such as can be carried to the Supreme Court for final determination, and not for a reversal because of an error of the Master or the Court in determining the expenses. What would be still more to the point would be for the Master to determine the expenses from the standpoint of both the railway company and the Attorney General. And there is no valid reason why the cases should not be brought to a conclusion within the next ninety days. And if this is not done the delay will not be chargeable to the Court.

348 This memorandum opinion was written many weeks since, but withheld by request, awaiting the decisions of the Supreme Court in Minnesota and North Carolina cases. Those cases were decided on the twenty-third instant, adversely to the State officers. And it is deemed unnecessary to await the opinion, which this Court has not yet seen.

Kansas City, Missouri, March 31, 1908.

349 In the Circuit Court of the United States, Western District of Missouri, at Kansas City.

No. 2988.

THE ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY, Complainant,

vs.

HERBERT S. HADLEY, Attorney General of the State of Missouri; Joseph P. Rice, John A. Knott, and Frank A. Wightman, Railroad Commissioners of the State of Missouri, et al., Defendants.

And Seventeen Other Like Cases, Being Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004, 3006.

Mr. Frank Hagerman for each and all of said Eighteen Railroad Companies.

Mr. Herbert S. Hadley, Attorney General, Mr. John Kennish, Assistant Attorney General, Mr. S. B. Ladd, and Mr. Frederick W. Lehmann, for all defendants, in all of said cases.

With Mr. Hagerman the following appeared for the railroads as designated:

Mr. W. F. Evans for St. L. & S. F. R. R. Co.
Mr. M. A. Low for C. R. I. & P. Ry. Co.
Mr. M. A. Low for St. L. K. C. & C. Ry. Co.
Mr. O. M. Spencer for C. B. & Q. R. R. Co.
Mr. J. G. Trimble for Q. O. & K. C. R. R. Co.
Mr. Gardiner Lathrop for A. T. & S. F. R. R. Co.
Mr. S. W. Moore for K. C. & S. Ry. Co.
Mr. Geo. P. B. Jackson for M. K. & T. R. R. Co.
Mr. J. L. Minnis for Wabash R. R. Co.
Mr. R. A. Brown for St. J. & G. I. Ry. Co.
350 Mr. E. L. Scarritt for C. & A. R. R. Co.
Mr. John H. Lucas for K. C. C. & S. Ry. Co.
Mr. M. L. Clardy for Mo. Pac. R. R. Co. and St. L. I. M. & S. R. R. Co.
Mr. J. D. Hostetter for St. L. & H. Ry. Co.
Mr. S. H. West for St. L. S. W. Ry. Co.

Opinion.

SMITH MCPHERSON, *Judge:*

1. Each of the eighteen railroad companies is doing a general railroad business within the State of Missouri, all but one doing both a state and an interstate business. Under the general railroad statutes of the state, the railroads were classified under three classes, the one class being allowed to charge for passenger rates three cents per mile, and the other two classes, four cents per mile. Freights

likewise were classified with certain maximum rates. The Railroad Commissioners of the state were authorized to fix and establish rates, not in excess, however, of these maximum rates fixed by statute.

In the year 1905 the Legislature of the state by statute which took effect June 16th, 1905, provided for certain maximum charges. On the day the statute took effect each of the railroad companies filed their bills of complaint herein against the Attorney General and Railroad Commissioners, asking that they be enjoined from enforcing the statute upon the ground that the rates thus fixed were not remunerative, resulting, as is alleged, in the taking of their property without compensation. A restraining order in each case was issued, and within a few days thereafter upon notice and full hearing, a temporary writ of injunction as prayed was issued. Several months thereafter the cases were referred to a Special Master to take the evidence and make his findings of fact and report the same to the Court.

351 In 1907 the Legislature of the state repealed the statute of 1905 and enacted a substitute therefor, which act was to take effect in June, 1907. On or about the day the statute was to take effect, each of the complainants filed its amended and supplemental bill setting forth the pendency of the actions and the action theretofore taken by the Court therein, and asking that the enforcement of the statutes, one of which fixes certain maximum freight rates, and the other, passenger rates of two cents a mile, be enjoined on the ground that such rates were not remunerative, but confiscatory, and if enforced, would be taking the property of the railroad companies without compensation. At or about the same time the state officers instituted proceedings in certain State Courts of Missouri against the railroad companies asking for an order that said two statutes of 1907 be enforced.

The Attorney General and his associates insisted that an entirely new situation was presented and insisted that the proceedings were instituted in the State Courts in advance of filing the Supplemental bills herein, and insisted that the State Courts had first acquired jurisdiction of the subject matter which would be to the exclusion of any action by this Court. The railroad companies insisted that the general subject matter was covered by the original bills of complaint and defendants' answers thereto, and that the statutes of 1907 should be carried forward by supplemental bill. It was likewise most earnestly contended that the actions in this Court were in effect against the State of Missouri in contravention of the Eleventh Amendment to the Constitution of the United States. But this Court after the fullest argument and consideration adjudged that this Court was not seeking to take jurisdiction against the State of Missouri as a state, and that the very office and nature of the supplemental bill as recognized from time immemorial by the equity practice required this Court to take cognizance of the supplemental bills and proceed with the litigation. (161 Fed. 419.)

In June last by agreement of parties, the Court revoked the previous order of reference to the Special Master and directed him to

return to this Court the evidence he had already taken, and
352 ordered that the case be tried upon oral testimony and such documentary evidence as the respective parties might offer. The evidence has been concluded, and the cases have been fully argued, and are now for final decree.

2. Many believe that the better and safer practice would be to confine all litigation to the State Courts wherein is involved the validity of rates to be observed by railroads and other public utilities when such rates are fixed by ordinances of a city or statutes of a state. It is insisted that this would be more deferential and more in a spirit of comity to first allow the State Courts to pass upon such questions. It is urged that the decree of a State Court could be carried to the Supreme Court of the United States for final decision.

This is plausible and convincing to men who have not thoroughly considered the question. It is plausible, because such a course can be followed. But every thoughtful and patriotic man well knows and believes in the proposition that the Supreme Court of the United States should ultimately pass upon all questions arising under the Constitution of the United States. And the question whether rates thus fixed by ordinance or statute are confiscatory or remunerative, is one arising under the Constitution of the United States, and that question is wholly a question of fact, and is not longer an open question as to the law. This being so, the question cannot be passed upon by the Supreme Court of the United States on these questions of fact when there is a conflict in the testimony. Section 709 of the Revised Statutes of the United States is the only authority for taking a case from the highest court of a state to the Supreme Court of the United States, and the procedure thereby allowed is by writ of error. And the office of a writ of error is to authorize an appellate court to review questions of law and not to review questions of fact. So that when a case goes from the Supreme Court of a state to the Supreme Court of the United States, it can only go by writ of error, and the Supreme Court of the United States necessarily must take all questions of fact as being foreclosed by the State Courts. Therefore, when the case is wholly dependent on controverted
353 questions of fact, it is utterly useless to carry the case to the United States Supreme Court from the decision of the State Courts, as an affirmance necessarily will be ordered, and the question as to whether the United States Constitution is being trampled down cannot be considered. There is no other method of reviewing the decision of the State Court by the Supreme Court of the United States than by writ of error, and this is so in chancery cases as well as in actions at law.

State Corporation Com. of Va. v. Atlantic Coast Line Co., recently decided by the Supreme Court of the U. S.

Bement v. National Harrow Co., 186 U. S. 70, 83.
Dower v. Richards, 151 U. S. 658, 666.
Egan v. Hart, 165 U. S. 188.
Adams v. Church, 193 U. S. 510.
Chrisman v. Miller, 197 U. S. 313, 319.

It follows that all efforts to enforce the trial of such questions in State Courts would result, if successful, in having the State Court finally determine when the National Constitution as the supreme law of the land, shall be applied. The Supreme Court of the United States is the tribunal to finally determine all questions, including those of fact, wherein the National Constitution is involved.

3. Upon their face the statutes in question are with reference only to state commerce. But it is urged that they are void because in effect they directly have to do with interstate commerce. The facts are as follows:

Between Kansas City and the Joplin mining district there are three lines of railway. The Missouri Pacific between these points is wholly within the state, and the other two, partly within and partly without the state, and therefore between the two Missouri cities of Kansas City and Joplin, are doing an interstate business under the decision of Hanley v. R. R. (187 U. S. 617.) The same situation exists between the cities of St. Joseph and Kansas City, two of the roads being wholly within the State between the two points, and two partly within and partly without.

354 And between the cities of St. Joseph and St. Louis such situation is emphasized, the Burlington road being wholly within the state between the two cities, and the Missouri Pacific a part of the distance being within the State of Kansas. The facts are that when the Missouri statutes lowered the passenger rates on the roads wholly within the State between said points, the interstate roads between said points were compelled by competition to lower their rates to correspond with the state rates thus fixed by statute. By reason thereof the argument is that the Missouri statutory rates control the interstate rates between the cities named, and therefore are void as being in conflict with the Commerce Clause of the National Constitution.

During the period of railroad building, for a time the western termini were at the Mississippi River. By reason thereof, and by reason of competition on account of river transportation, the railways fixed rates from the East to that river. After a time roads were completed to the Missouri river. Rates to points on that river were fixed on rates to the Mississippi River, plus rates between the two rivers. And for thirty years or more rates have been thus fixed. And as the Missouri statutes lower the rates between the two rivers, the argument is that the statutes lower the interstate rates from the East to Missouri River points, and to points to the West.

This presents a great question, and one which is far reaching and in importance cannot be overstated. In the great case of Ex parte Young (209 U. S. 123), decided but last year, the Supreme Court in its majority opinion in speaking of this, said: "The question is not, at any rate, frivolous." But the point was not decided. But here the question is fairly and sharply presented for decision, with no precedents directly in point.

From the days of the Confederacy to the present time there have been clashings between the National Government and the States, owing, in part to the ever changing trade and commerce, and in

part to the different schools of belief as to our system of government.
And the pendulum will ever move back and forth. Even
355 those who most strongly denounce the Kentucky Resolutions,
and the doctrine of nullification, are often the first to forget that they believe in not only the express but the implied powers of our government as taught by Marshall in McCullough v. Maryland (4 Wheaton) and that this government is one of the whole people. Such as thus believe are often the first to advocate and rush through in the form of state regulation, measures for their own state, regardless of the rights of the people of other states. Neither the Ohio River, nor any other boundary has been the dividing line. Many of the cases in which state statutes have been declared void by the Supreme Court are statutes requiring a license to sell imported goods; imposing a tax on bills of lading for gold carried out of the state; imposing taxes on alien passengers; imposing taxes on passengers and merchandise carried into or out of the state; taxing drummers; regulating telegrams sent to other states; taxing those who use wharves; requiring inspection of animals for slaughter; and other like statutes in principles. All such statutes have gone down by reason of the Commerce Clause, and the uniform holdings of the Supreme Court.

The Commerce Clause gives Congress the power to regulate commerce:

1. With foreign nations;
2. Among the several states;
3. With the Indian tribes.

As to the first and last no doubt Congress can not only regulate, but can prohibit. It is another proposition whether commerce can be prohibited among the states.

One of the methods resorted to for the construction of Constitutional provisions, as well as of statutes, is to ascertain the then existing evils. We find that New York and other sea coast states placed burdens on commerce from inland points to sea coast points and across such states for shipment by water. It was burdens on commerce that the inland localities complained of, and that such burdens should not be imposed, was the reason for adopting the
356 Commerce Clause. If there had been no such burdens, it is
likely that there would have been no Commerce Clause, and possibly no Constitution. I have searched diligently, but find no case decided by the Supreme Court declaring a State statute void that did not in some form and in some manner place a burden on, or in some way hamper or obstruct, commerce from or to another state.

The case of Louisville & Nashville R. R. v. Eubank (184 U. S. 27), comes more nearly sustaining the proposition that the Statutes of Missouri impinge upon the Commerce Clause than any other case that I recall. There the State of Kentucky by its Constitution provided that more should not be charged for a short than a long haul. The Company had rates in force from Nashville, Tennessee, to Louisville, Kentucky, which were less than was being charged from points in southern Kentucky to Louisville. This was held

by the Court of Appeals of Kentucky to be in violation of the State Constitution. So that we have a case of a state law, with the decision of the State Courts read into it, providing that more shall not be charged for a short haul wholly within the state, than for a long haul partly without the state. This must be so, because the same provision of the Kentucky Constitution when applied to places all within the state was upheld by the Supreme Court, as will appear from the case of Louisville & Nashville R. R. v. Kentucky, 183 U. S. 503.

And the case of Wabash &c., R. R. v. Illinois, 118 U. S. 557, was decided in like manner, because and for the only reason that the Supreme Court of Illinois had so ruled as to read into the statute the objectionable feature.

But the Missouri Courts have not so construed these statutes of the state. When they do so decide, then the Eubank, and Illinois cases will be the precedents to thwart such legislation as thus construed. In the meantime there is no belief that the Missouri Courts will so decide.

The case of Hall v. De Cuir, 95 U. S. 485, is cited by counsel for the railways. Louisiana had a statute requiring carriers to
357 receive and carry passengers without distinction on account of race or color. The steamboat in question plied between New Orleans and Vicksburg, doing both a state and an interstate business. The vessel was duly enrolled and licensed for the coasting trade. The boat had an upper and a lower cabin, the upper for white people, and the lower for colored persons. The plaintiff De Cuir was a colored woman, and took passage at a landing in Louisiana for another landing in that state. Being refused admission to the upper cabin solely because she was colored, she was awarded damages in a State trial court, which judgment was affirmed by the State Supreme Court. The Supreme Court of the United States reversed the judgment. Two reasons were given for the reversal, the one by Justice Clifford on the ground that navigation of the Mississippi River is wholly within the control of Congress. The other opinion was by the Chief Justice who grounded his opinion upon the proposition that with the objections of most people to associating and rooming with colored persons, that to allow a colored woman to be carried in the first cabin, even though but for a ride within the state, would drive white passengers seeking an interstate ride from the boat. Or, as I have hereinbefore stated the statute in effect placed a burden on the interstate business. After discussing the question, and the many and great difficulties in applying the Commerce Clause, the Chief Justice said:

"But we think it may safely be said that State legislation which seeks to impose a direct burden upon interstate commerce, or to interfere directly with its freedom, does encroach upon the exclusive power of Congress."

The State statute in order to be declared void, must by its terms and recitals interfere directly with commerce to or from another state, or the statute by construction given it by the highest court of the state must so operate in its results. But here we have no

such recitals in the statute, and it has not been so declared to mean by the Missouri Courts. And while counsel for the railways do not in terms so insist, they in effect urge that the laws of political economy, custom and convenience shall act as a substitute for Missouri statutes, and the decrees of the Missouri Supreme Court. In other words, they in effect, and I believe in language insist that
358 the rules formulated a third of a century ago for making rates first to the one river, and then between the two rivers, and the laws of competition, shall be regarded as the equivalent of statutory law. I am mindful that it is believed by many that to not recognize these laws of trade, will impair if not destroy the great cities like St. Joseph, Kansas City and St. Louis. I am mindful of the fact that between the two rivers the distance by the Burlington is but 198 miles, with others roads 300 miles or more, and that the shorter road necessarily fixes the rates between all points on the rivers. But competition does that, and the statutes are silent. The statute may or may not be unfair. I am considering the Commerce Clause as to its bearing on statutory enactments, and am not forgetting that many valid statutes are unfair, and some even unrighteous.

I have believed heretofore that the rights and duties, powers and prerogatives of any one state are the same, neither more nor less than those of any other state, and this is so whether we compare two or more of the original Thirteen, or one of the older with one of the newer states. But in effect the argument of counsel for the railways is that this is not so. Missouri and Maine were admitted into the Union the same day by the same enactment. Maine has but its percentage of commerce into and out of the state, with no trans-state business by reason of its geographical position, and has no large city. Missouri is a central state, with large cities, one of which is third in importance as a wholesale center, and second to but few as a manufacturing place. St. Louis and Kansas City are the gateways for both commerce and passengers, surpassed only by one, or possibly two other places. These facts are of tremendous importance to those who legislate either for the state or the nation. That legislation can be harmful to these great interests, any thoughtful person can readily see. But that these facts, important as they are, can be used to give a construction to or coloring of the Commerce Clause, I do not believe. In my opinion it is much the wiser to contend for the strength and power of the nation, by insisting also upon the rights and powers of the states as was intended they should have. For a third of a century it has been the recognized constitutional construction that the states have the power
359 within defined limits to regulate charges by railways wholly within the state. And to now say that one state like Maine can regulate charges by a railway for transportation wholly within the state, and that Missouri cannot because flanked by two great rivers, and by a long time custom in fixing rates, is to announce a rule not heretofore recognized, and in my opinion one entirely illogical.

It may or may not be true, that it would be for the better to have

all the interstate railways of the country, doing both a state and an interstate business, under one supervising authority, such as a commission, regulating both classes of business. But under the Commerce Clause can this be done?

Employers Liability cases, 207 U. S. 63.
Wabash R. R. v. U. S. (7th Circuit) — Fed. Rep. —.
9 Columbia Law Review 38.
U. S. v. Colorado &c. R. R. Co. 157 Fed. 321 (8th Circuit).

Difficult as these problems are, they can and will be solved, and for the right. Pessimists discourage. However, their statements that everything is wrong, and will grow worse, must be heavily discounted. Because railway systems reach into many states, and are units, crossing state lines arbitrarily fixed, a hopeless condition is not thereby brought about. It is not true as some say, that each state can lower the rates to confiscation, as all know who have read the decisions to any purpose. I believe as firmly as does anyone in the power and the rights of our general government, and when the clashings come as to the power of the state and the general government, let the doubts be solved in favor of the government. But as to some matters there are no doubts, and two of these are that the Constitution is the supreme law of the land, and that as to all local matters the states are in control. All should insist upon both.

4. It is contended that the statutes are void because of the excessive penalties, reliance being based on the case of Ex parte Young, (209 U. S. 123). Until the decisions in the Minnesota cases, (134 U. S. 418 and 467) it was an open question whether a review of rates fixed by a legislature or a commission acting under a legislative authority, could be had by the courts. The Minnesota statute authorized
360 a commission to fix certain rates, which rates thus fixed should be final and conclusive. The Supreme Court of the State adjudged that such rates were not merely advisory, nor prima facie reasonable, but conclusive and not subject to review by the courts. (37 N. W. 782.) But the United States Supreme Court reversed that decision, and notwithstanding the strong dissenting opinion by Justice Bradley, concurred in by Judges Gray and Lamar, and Justice Miller hesitating, the question is now at rset, and the courts not only can, but must, determine the question whether such rates are reasonable.

In time the Legislature of Minnesota believed it could in another way make its determination as to rates conclusive and beyond the powers of the courts to interfere. This was attempted by providing penalties for violations, to that which was equal for one week's business to life imprisonment for all officers and agents, and confiscation of all the railway property, if resistance by litigation was made, and such litigation failed. The decision in Ex parte Young followed, the Supreme Court failing to see the distinction between a statute providing that agents should become felons with life imprisonment pronounced, and all corporate property seized and confiscated, if an unsuccessful contest should be made in the courts.

The Statute of Missouri of April 15, 1905, covered by the original

bills herein, fixes the only penalty for violations by allowing treble damages, and a reasonable attorney's fee. Citation of authorities need not be made to sustain such penalties. And in any event that statute has been repealed. The two cent passenger rate statute of February 27, 1907, provided for a penalty of not less than one hundred nor more than five hundred dollars. What shall be deemed a complete or separate offense is not defined. The freight rate statute of March 19, 1907, provides for no minimum penalty, but the same shall be a fine not exceeding five thousand dollars. Imprisonment is not designated under either statute, unless by some general statute for the non-payment of the fine; while under the Minnesota statute the penalty for each offense was fixed at a fine of not more
361 than five thousand dollars, or imprisonment in the State prison for not more than five years or both.

This objection to the Missouri statutes is without merit.

5. Evidence is before the Court tending to show that a large number of men have been discharged from the service of the railroad companies by reason of the reduction of rates. And this fact is urged as one element that should be considered. It is true that before interest can be paid on the bonded debts, that operating expenses, including labor, and materials, largely made up from labor, must be paid. And as of course all of these including interest must be paid before dividend checks are issued. The states should and usually do attempt to legislate in the interest of laboring men. And if the legislation under consideration is hostile to their interests, the legislature, and not the courts, have the responsibility. I agree to all that was said in argument in their behalf. I agree that in sobriety, and intelligence, and faithfulness to duty, they are surpassed by no other class of men. Their dangers are great, and the people owe them much. But if employés are reduced in number, or now or later on their compensation will be reduced, and if such results are by reason of legislation, then their remedy, if they have one, must be sought elsewhere than in the courts.

6. It is urged in argument that the reduction of rates will impair the service to the public. The charter of a railroad is an implied contract with the state. The company is given such right under such contract to perpetually operate its road. The state agrees that it shall be reasonably and sufficiently remunerated according to the business done. The company agrees to furnish reasonably efficient service. To furnish no service is a complete breach of the contract. To furnish a partial service is a partial breach. What is a reasonable service, is a question of fact dependent upon the circumstances of each case.

Thus it is that the Supreme Court has held that in some instances state legislation is valid which requires through and interstate trains to stop at important towns to let off and take on passengers, state and interstate.

362 Mississippi v. R. R., 203 U. S. 335.
L. S. & M. S. Ry. v. Ohio, 173 U. S. 285.
Gladson v. Minnesota, 166 U. S., 427.

And in other cases such state legislation has been declared invalid.
R. R. v. Illinois, 163 U. S. 142.
R. R. v. Illinois, 177 U. S. 514.
R. R. v. South Carolina &c. 207 U. S. 328.

All those cases turned on the facts, and the question of fact was as to the service the public should have.

Of course the service rendered and the compensation received should have a proper relation. The expenses incident to, and that can be specifically located in connection with, a particular train, are not all the expenses to be accounted for, as will hereafter be discussed. But it is true that without reasonable compensation there cannot be reasonable service. It is common information that the public in many localities is demanding increased service.

But this phase of the question is so indefinitely covered by the evidence, and is so general in the very nature of the question that no decree can be rendered herein that will cover the proposition.

7. It is urged that these statutes are void because they are not enforceable as to some of the railway companies within the state, and the claim is, that being void as to some, they are void as to all. It is conceded in argument that as to two roads, the St. Louis & Hannibal, and the Kansas City, Clinton & Springfield, the rates fixed are not compensatory. The State's experts agree to this.

Usually statutes fixing rates for railroads to observe, classify the roads according to their earning power, and fix the highest rates for those earning the least. But this was not done, except that railroads of a length not greater than forty-five miles not owned nor leased nor controlled by a trunk line, may change four cents per mile per passenger.

The sole theory upon which rates are adjudged void can only be that the rates are not compensatory, and to so decree, the Court must have the complaint of each and every road making the claim. Complainants have recognized this by their counsel in bringing as
363 many independent actions as there are railroads complaining.

Whether there are any other railroads within the state than these eighteen complainants, neither the allegations of the pleadings nor the evidence show. Perhaps the Court should take judicial notice of whether there are other roads or not. Be this as it may, the Court is not advised. I assume there are no other roads within the state than these eighteen.

The record shows that two of the cases, those brought by the Rock Island and the St. Louis, Kansas City & Colorado, have been consolidated for trial purposes, the one road having become the owner of the other since the litigation commenced. The record further shows that nine cases were tried, and that the other eight cases were to be covered by decrees the same as decrees in some of the cases tried, the particular cases being designated by the record. All this shows to my mind that complainants' counsel rightly conceived the theory upon which these bills of complaint were presented. The record shows further that before the Master, there were many attempts for position on both sides as to what cases should be tried, the Attorney

General and his associates desiring that the Burlington and two other strong roads having the short lines, should be heard, and the others either continued, or that decrees in the other cases should follow the decrees in the cases of the strong roads. Counsel for the railroad companies were desirous of trying the cases brought by some of the other companies, or at least that the roads should be classified into three or four classes, but that the Court should hear only one case of each class. This emphasizes the theory that was in counsels' minds all the way through this litigation.

In one respect at least it seems to me that these statutes should be declared valid or void as the facts may warrant, as has been frequently done with reference to ordinances of cities. The ordinances of cities regulating speed both for trains and teams are declared unreasonable, and therefore not enforceable as to some parts of the city, and valid and enforceable as to other parts of the city not so densely populated. These statutes are not void upon their
364 face. The company which alleges that they are void must make a showing that the rate considering all the facts and circumstances are not compensatory as to that particular road, failing in which, the statute will be enforced, and successful in which, as to that particular road the statute will not be enforced.

The case of R. R. v. McKendree, (203 U. S. 514,) is not in point, because there the question was with reference to an order of the Secretary of Agriculture which was void in part and was not separable, it not being possible to eliminate the valid from the void features.

The Cotting case (183 U. S. 79,) was decided by reason of an entirely different principle. The statute in that case on its face shows that a company doing little business was not to be regulated, while the company doing much business was made subject to the statute. And by reason of that vice, the statute was held void. That the Cotting case is not in point, see:

St. Louis &c., v. Illinois, 185 U. S. 207.
McLean v. Arkansas — U. S. — (January 4, 1909).

The Connolly case (184 U. S. 540) was likewise decided in part at least because the statute did not apply to all classes of persons engaged in a like business, and that the statute was not separable, the valid from the invalid.

The case of Ju Toy, (189 U. S. 253) the Trade Mark cases, (100 U. S. 82,) and the recent case of Howard v. R. R., (28 Sup. Ct. Rep. 141,) were decided by reason of this same principle, namely, as to whether the statute is separable or not.

Therefore the holding is that these statutes are not void upon their face, and cannot be declared void for the one reason that the evidence shows they are not enforceable as to two or more roads.

8. The state earnings are made known to a certainty, concerning which the experts on both sides agree. And whether in earning them the company gains a profit, or sustains a loss, is dependent upon the expense in making such earnings. Some of these expenses can be definitely specified, but others, like maintenance of way, sal-
365 aries of all officers including ticket agents, handlers of freight, terminal expenses, compensation of many laborers, and other

things, are all occasioned for carrying both freights and passengers, state and interstate and miscellaneous of each. And herein is the problem how to make the apportionment.

The track mile, or train or car mile does not furnish the solution, because everyone agrees that neither of those methods will do, and no one of the experts or counsel on either side asks for such a solution. Therefore there is and can be but one of two methods adopted. Neither can be relied upon if mathematical precision is demanded. But the one more nearly correct and satisfactory, is the one to be adopted. And that is what is done in litigation concerning injuries and death; the age, earning power, loss of time, can be fixed, some with certainty. How many years the party had before him is fixed by mortality tables, wholly unreliable as to the individual, but fairly certain as to the average.

In taking property under the power of eminent domain, we know the assessed value, the amount of taxes, the rents, and maintenance. Some or all these elements are put in evidence, while all other is matter of opinion, concerning which witnesses and jurors differ. And so it is in most litigation.

9. The theory to now recognize must be either the proportion of earnings, state and interstate, or ton and passenger mile.

That it costs more to carry either freight or passengers proportionately for a short than a long haul, is undoubtedly true, although all the elements are not more expensive. Local trains generally have poorer and older and cheaper cars and locomotives. But their speed is greater between stations. There are many stops. They carry proportionately much greater dead weight. They do much switching, and there are many delays. Their crews are paid more proportionately to distance and what is carried. The trains are daylight trains only. With freight the carload and number of cars are much the less, and from station to station grows less, and is largely made up of single parcels, boxes, and individual shipments from as many consignors to as many consignees, first put in one sta-
366 tion and at the end of the trip, into another station by the company. Usually there are two terminals, comprising an enormous amount of the investments and expenses of the company. The local train is seldom loaded to the capacity of the engine, to the loss of much of the investment and expense. The clerk hire, selling tickets, issuing bills of lading, making expense accounts, and auditing and making records, are attended with like expense for the small and the large items. Many stations would be done away with but for local business.

In nearly every instance enumerated, as to the interstate, which includes trans-state, the reverse is true, although much magnified in my opinion as to terminals, and particularly as to trans-state, because in my judgment some of the interstate business has two terminal expenses within the state. The two gateways in Missouri through the one or the other of which a large percentage of business both interstate and trans-state passes, are Kansas City and St. Louis. And at both of those places the investments are very large, and of course whether owned or rented, the expense is practically the same. But

these terminals are for both. And while I believe the terminal expenses at St. Joseph, Kansas City and St. Louis as to trans-state business is minimized, I do not agree with the experts who claimed that there are none of those expenses. Their cross examination shows this to be a mistake.

But from the great weight of the testimony, it can well be said that the ton mile is not reliable, and the revenue is more nearly correct, as showing that it costs more by twenty-five per cent. to carry passengers, and fifty per cent. to carry freight locally than it does when interstate. Generally speaking this is undoubtedly true. There are exceptions, one of which is shown by the Burlington with its three roads from St. Joseph, the one to Villisca, Iowa, another to Creston, Iowa, and a third to Chariton, Iowa. They are all interstate roads, each with two terminals, but each operating only local and daylight trains. The Wabash Illustrates this with roads across the arbitrary state line between Missouri and Iowa. And there are other illustrations, but less noticeable, in the testimony.

367 But all these are exceptions and the testimony establishes the rule as stated.

The Missouri Legislature has recognized the proposition in all of its rate statutes, and particularly in the statutes now assailed, that it costs more per mile for a short than a long haul.

See Act approved April 14, 1905; and the Act of April 15, 1905, covered by the original bills herein. The passenger rate statute under consideration fixes a two cent fare for all trunk lines, and four cents per mile for a road less than forty-five miles in length.

The freight rate statute under consideration, in every schedule recognizes the principle that proportionately there should be more charged for a short than a long haul. For instance, Class D allows a charge of five cents per hundred for carload lots for the first twenty-five miles, and one half cent for the second and additional twenty-five miles.

And commencing with the statute of Pennsylvania of 1846 chartering the Pennsylvania road, to the present time, every statute upon the subject fixing freight rates, and many of them fixing passenger fares, recognizes this principle. So that while it is a legislative function to fix rates, we have innumerable legislative recognitions of the greater cost for weight per mile for a shorter than a longer haul, and in some instances as to passengers. And no state has so recognized this to a greater extent than has the Missouri Legislature.

And the courts passing upon the question, have invariably recognized this as being so, and that the revenue theory is the correct one as against the ton mile.

This was so recognized by the Supreme Court of Pennsylvania in case of Railroad v. Pennsylvania County, 68 Atl. Rep. 677, but not discussed.

In R. R. Co. v. Tomkins, 90 Fed. 363, Judge Carland, of the South Dakota District, in passing on the statutes of that state, said:

368 "This Court believes that it is fair and just to first ascertain what per cent of the total gross earnings in any one year the total local earnings are for that year, and having ascertained

that per cent. to take the same per cent. of the total value of the property as a fair value upon which to fix local earnings."

The decree was reversed, and although an equity case, remanded because of a failure to make a material finding. (176 U. S. 167.) The same case under the title of R. R. Co. v. Smith, 110 Fed. 473, on final hearing resulted in a decree enjoining the rates, and the question of expenses was arrived at by the extra cost and on the revenue theory.

The case of R. R. Co. v. Keyes, 91 Fed. 77, is an opinion by District Judge Amidon, concurred in by Circuit Judge Thayer, enjoining North Dakota statutory rates. The argument of the opinion condemns the ton mile theory, and adopts the revenue theory. The criticism of the case is, that conditions in sparsely settled North Dakota are not like those in this state. But the question of which theory was the more accurate for computation, was fully covered, and the ton mile was condemned.

In re Arkansas R. R. Cases, (163 Fed. 141) decided but a few months since by Judge Van Devanter of this Circuit, a temporary injunction was issued against the enforcement of the Arkansas statutory freight and two cent passenger rates. And in most respects the State of Arkansas with reference to rates is like that of Missouri, especially the south half of Missouri. Judge Van Devanter in discussing this question, said:

"Other standards are suggeted, but the proofs indicate that none of them is as satisfactory or accurate as is the difference in cost in its relation to the revenue."

And the proofs, including statistics and tables and some of the same expert witnesses on each side, were the same as in the cases at bar.

The great case from Nebraska of Smyth v. Ames was heard on the Circuit by Justice Brewer on oral testimony, as the cases at bar have been heard. The entire discussion of the question by Justice Brewer in a lengthy opinion is on the extra cost and revenue
369 theory, entirely ignoring the ton mile theory. That case resulted in the state statutory freights being enjoined by Justice Brewer, District Judge Dundy concurring.

The case was carried to the Supreme Court, (169 U. S. 467,) resulting in an affirmance of Justice Brewer's decree. The opinion of the Supreme Court by Justice Harlan is exhaustive, and the tables used by him to show the facts, and the entire argument is with reference to the extra cost and revenue theory, utterly ignoring the ton mile theory.

Recurring to the Tomkins case, (90 Fed. 363) above alluded to, that case was reversed by the Supreme Court, (176 U. S. 167) and the question of fact was only discussed from the revenue theory. The reversal was only because the lower court recited that it was unable to ascertain what was the actual cost of earning the local earnings for certain years. But as the lower court on the first hearing proceeded on the extra cost and revenue theory, and as that was what was discussed by the Supreme Court, and under the Mandate

the case went to decree, (110 Fed. 447,) on the revenue theory, I am convinced that the Supreme Court for the guidance of trial courts has adopted the revenue theory as the one more just and equitable both to the patrons of the road and to the companies.

So that we have the Supreme Court in the two cases recognizing the revenue theory. Two Circuit Judges of this Circuit have so held. And the same holdings have been made by at least three District Judges, and the Supreme Court of Pennsylvania impliedly, although the argument in that opinion is not strengthened by reason of a statement as to the measure of proof, concerning which the minority opinions without doubt are correct.

As an argument against the revenue theory, and for the ton mile theory, no court has spoken in so far as counsel on both sides and I are advised. In some phases this is a question of fact, or logic, or argument, or opinion, partaking of all. But so many eminent courts have thus spoken, even though not a question of law, and even though the traffic in the states differ, yet such opinions tend most strongly to create an undoubted belief that the cost for carrying both passengers and freight locally is greater proportionately than for doing a long or interstate business, and that the
370 revenue theory is the only one to apportion the cost of each business.

The Wisconsin Railroad Commission made an exhaustive and thorough investigation of these questions two years since. Evidence of both sides was heard. Experts interested, and those not interested, testified. Many months of time were given to the hearing and in reaching conclusions. A valued report was the result. The findings and conclusions were:

1. The cost of carrying local and state freight is greater than for carrying interstate freight and passengers.

2. That this extra cost must be considered, and then take the gross earnings as the basis upon which to allot expenses between the state and interstate business.

3. That less than two and one half cents per mile for local or state passengers was not remunerative in the State of Wisconsin.

10. When the statutes in question were enacted, it was believed by many that by reducing the fare, there would be much more travel. For a month or so this proved to be true. But with the novelty gone, the testimony shows that the increase has been less than three per cent. and more nearly one per cent.

It was likewise believed by many that with the abolition of passes and other forms of free transportation, that expenses would be lessened and receipts increased. Ministers sometimes received free transportation, but generally at half rates. Many lawyers and doctors received passes under guise of retainers for services never performed. Bankers received them under the claim that it was compensation for signing bonds, and cashing Chicago and St. Louis exchange. Politicians demanded, extorted, and received them for supposed influence. Officials received them as a courtesy. Many newspaper concerns received them, from the proprietor and editor-

in-chief down to the typesetter, (relatives included,) under the pretense that it was an exercise of liberty of contract, for which the newspaper published the arrival and departure of trains, with an occasional local and sometimes abbreviated plate matter. To receive
them was often followed by charges of corruption; and to
371 refuse them, by charges of demagogy. Every person conceded it to be a wrong system, and most people were advocates for its abolition, except as to the class to which he belonged. But it was abolished, and does not longer exist, and the evidence shows that as to state earnings, the passenger revenue is increased by reason thereof less than one per cent.

11. This leaves but one question for decision, and that question largely one of fact. The question is whether the traffic wholly within the State of Missouri generally referred to in the evidence as local traffic, can be carried under the freight rate statute of 1907 and the passenger fare statute of 1907 at such profit as will give a reasonable return after paying expenses upon the investment, or whether such traffic is carried at a loss or less than such reasonable profit.

Thousands of pages of testimony, taking weeks of time, have been filed. This testimony was orally presented, part to the Master, and part to the Court, accompanied with volumes of statements, reports, schedules and tables. Every phase of every question of both debit and credit has been worked out, tabulated, and filed. These exhibits are the result of something like one year of work by the expert accountants representing both sides, as a result of their examinations of train reports, waybills, auditors' books, and of the accounts of the passenger and traffic departments of the several roads. This work required not only much time, but energy, and patience, and learning, and great skill. But each side had accountants of the highest character, and possessing all of those qualifications. The four accountants, Mr. Peabody and Mr. Johnson representing the railway companies, and Mr. Taliaferro and Mr. Hamilton representing the State, impressed me after hearing them testify and being in consultation with them for ten days after the cases were submitted, that the sole purpose of their work was to exhibit the truth, differing only as to extra cost, and that difference of extra cost largely confined to the local passenger traffic, and differing as to the
theory as to how the expenses between local and interstate
372 traffic within the state should be divided. Aside from those two questions there is not the slightest variance between the testimony of the experts upon the two sides. During the ten days following the submission of the cases, they and the Court being alone, at the request of the Court they prepared a statement in each of the nine cases submitted, which have been ordered filed. To each of the nine statements is appended a certificate showing the time covered, and that such statement correctly shows the results of the various assumptions set forth therein, which certificates were signed by the four expert accountants. Seldom, if ever, is a Court under greater obligations to expert accountants representing the two sides, than the Court and all parties, the railroads and the public, owe

these four gentlemen. Usually experts representing different sides do not agree to anything. Here experts representing the different sides agree to everything pertaining to the accounting, the differences only arising as to the basis.

The Court is likewise much indebted to counsel on both sides, who for four days argued these cases with a fairness, and wealth of learning and eloquence seldom displayed at the bar. And now after the fullest investigation of the record, the Court has reached the conclusion that upon this question of fact the statutory rates fixed by either and both statutes are not remunerative. And it only remains for the Court to give the reasons for such conclusion.

And in giving these reasons, clearness is added by eliminating those things so clearly established by the evidence, or so nearly conceded in matters of law as not to be debatable.

1st. The unquestioned and undoubted rule is that there is a presumption both of fact and of law in favor of the validity of every legislative enactment. The railway companies have the burden of removing this presumption, and showing that the statute clearly, or as some Courts say, palpably, and others say, beyond a reasonable doubt, that the statute is invalid. In these cases the Court has recognized this rule. The authorities upon this question form a long and unbroken line, with the single exception of the majority opinion in the Pennsylvania case decided a year ago. (68 Atl. Rep. 676.) And that one authority is not persuasive.

373 2nd. All testimony and argument bearing upon the question as to what consideration the Legislature of Missouri gave to these enactments, is utterly immaterial. Much was said in argument as to the message of Governor Hughes of New York two years ago in declining to approve the two cent fare statute of that state. Governor Hughes had the moral courage to veto a measure of popular favor because as he believed the question had not been fully considered. But the relations of a governor to proposed legislation, and those of a Court to legislation consummated, are entirely different.

3rd. Most of laymen and many lawyers believe that the question is whether the railway company as a system is earning sufficient revenue upon the value of the property of the system. They believe that if the Burlington, Santa Fe, Wabash, or any other railroad system is earning such money as will pay all charges and expenses including taxes and interest, with reasonable dividends to the stockholders, that state rates for state business must stand. Of course no one believes this who has given the slightest attention to the question. That precise question was before, and was decided by Justice Brewer, (64 Fed. Rep. 165,) and affirmed by the Supreme Court in the Nebraska case of Smyth v. Ames, (169 U. S. 466). The only question is as to Missouri rates, less expenses properly charged against the same. And if this balance does not leave sufficient to pay a reasonable return, the law is invalid. And if the railroad system of any company is earning more than a reasonable return by reason of interstate rates, which affect the people many times more than local rates, and if such interstate rates are too high, Congress

either acting alone or through a Commission must make the corrections.

The Supreme Court during the present year in the case of City of New York v. Consolidated Gas Company of New York (211 U. S., —) decided that six per cent was fair and right to be given to the owners upon the true valuation. My opinion is that while a gas plant is in some respects different from a railroad, that a railroad property, properly built, and properly managed, should over and above expenses make a return of six per cent per annum.

374 And considering all the evidence, the evidence fairly shows that all of these roads were properly and economically built and are being properly and economically managed, and that after paying the expenses for maintenance and operation, that there is less than six per cent. of returns, and not more than three per cent. upon any of them and as to some of them a deficit, taking the property as above stated within the State of Missouri at its fair valuation. And this is so without reference to bonds, because in no case do the bonds bear six per cent interest. But taking the bonds into consideration, there is still not to exceed three per cent. returns, and many cases a deficit after considering all debits and credits, upon the true valuation for the state business. There is no evidence that any of the existing bonds were improperly issued either as to amounts or rates of interest. In fixing the value the Court has considered the evidence of witnesses as to the stocks and bonds outstanding, and the Court has considered the evidence of the fact that the Missouri State Board for taxing purposes has valued these properties. Of course those findings are not binding nor conclusive, but they are persuasive. But independently of stocks and bonds, and independently of what the State Board has valued these properties for taxing purposes, the evidence shows the valuations to be as recited in the findings of fact herewith filed, and to which reference will be made in the decrees.

It is absolutely necessary that many trains both passenger and freight do both a local and interstate business. Even the fast trains stopping at but few stations in the state carry passengers between such stations. And the same is true as to freight trains carrying freight both in carload and less than carload lots.

The valuation of the roads has been fixed by the Court as shown by the findings of fact. The entire state and interstate earnings of each of the roads within the state is known and fixed to a certainty the expenses are known and fixed. To apportion these expenses, must be done according to one of the two theories, and the correct theory is that according to revenue. One theory or other

375 must be applied to both freight and passenger expenses, and the Court should not adopt the one theory as to part, and the other theory as to another. The one theory is helpful to the one side, and the other theory helpful to the other side, the one theory to the one side in freight, and the other theory to the other side in passenger. But an arbitrary splitting of theories is illogical and unfair, and cannot be recognized. The court has adopted the revenue theory because a great number of the best railroad experts of the

country, against a very limited number to the contrary have so testified. Every Court that has ever had this question before it in so far as I am advised by the briefs of counsel and my own independent investigation has so held in the cases hereinbefore cited of the Supreme Court of the United States; in the two cases, by two Circuit Judges of this Circuit; by three District Judges of this Circuit, and by the Supreme Court of Florida, State v. Atlantic Coast Line (37 So. Rep. 657). And Beale & Wyman on Railroad Rates Regulation, Sec. 466 announces such as being the correct rule. The values of the property within the state have been fixed by the Court. The entire earnings within the state, interstate and state, freight, passenger, and miscellaneous of each, have been fixed. The entire expense is known, including the extra cost of each. To ascertain whether the result is a profit, and if so what per cent., or a loss, is but a problem of primary arithmetic, as is shown by Judge Van Devanter in Arkansas Rate Cases (163 Fed. Rep. 141). There are other methods equally simple, the resultant figures of course being the same. These computations show as to the commodities covered by the freight rate statute of 1907, that two roads, the Hannibal & St. Louis, and the Burlington, allowing nothing for extra cost, there is a deficit, and with all other companies less than two per cent. But with the extra cost added, the deficit for the two companies is much greater, and the other companies show a deficit.

The passenger earnings under the two cent fare law of 1907, allowing nothing for extra cost over interstate business, give no return whatever to the Rock Island, St. Louis & Hannibal, Kansas City, Clinton & Springfield, and the Great Western. The other
376 companies will have the following: The St. Louis & San Francisco between three and four per cent; the Santa Fe between four and five per cent; The Kansas City Southern a small fraction over two per cent; the M. K. & T. between two and three per cent; the Burlington between three and four per cent. But all this is arrived at by allowing no extra cost of service. But to add the extra cost for freight and passenger, there are no earnings over expenses. This is confiscation under the Constitution.

It being a legislative act, and not a judicial one, this Court cannot fix rates. It it could, two and one-half cent passenger rates would be fixed for the stronger roads, and three for the others. But that is for the legislature acting itself with experts, such as the State employed in these cases, or through a Commission with like assistance.

In view of General Equity Rules prohibiting findings of fact, and other matters from being inserted in decrees, this opinion has been extended. And to further show how the court has considered the cases, and the various questions of fact covered by the voluminous evidence, findings of fact have been made and signed, which will accompany this opinion.

Long and laborious as the work for the Court has been, I am of the opinion that the cases have been expedited by hearing the oral testimony as provided by General Equity Rule 67. It gave the Court a much better insight into the intricacies of the cases, and with a much better knowledge of the cases than could be gained by

hearing exceptions to a Master's report. And I am fully compensated by the belief that I have worked out the correct conclusions, and with the knowledge that if I am in error, either as to fact or law, that the cases can be speedily heard de novo by the Supreme Court of the United States. Because I feel in all cases, and in these cases more than ever before, as Judge Sanborn said in Boatmens Bank v. Fritzlen, (135 Fed. Rep. 650, 655);

"Every conscientious judge, every thoughtful man, upon whom is laid the grave responsibility and the heavy burden of determining the rights of his fellows, rejoices in the thought, wherever
377 such is the case, that his decision may be reviewed, and that, if erroneous, it will not work irreparable injustice to him whom he deems it his duty to defeat."

The decrees will be for the complainants. Each party will pay the costs by such party made, except the compensation of the Master and stenographer. The half of those will be paid by complainants, and the other half by respondents. The reservation clause usual in such cases will be in the decrees.

Kansas City, Missouri, March 8th, 1909.

[Endorsed:] 2988 etc. Opinion without findings of fact. Compared.

378 On the 17th day of April, 1909, a Supplemental Opinion was filed. Said Opinion is in words and figures as follows:—

In the Circuit Court of the United States, Western District of Missouri, Western Division.

No. 2988. Equity.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY, Complainant,
vs.
HERBERT S. HADLEY et al., Respondents.

And Equity Cases Nos. 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004, 3006.

Supplemental Opinion.

SMITH MCPHERSON, *Judge:*

These cases are pending on a motion to modify the decrees and opinion filed March 8th, 1909.

1. The costs were taxed, the one-half to the railway companies, and the one-half to the state officers. The company being successful, it is contended that the taxable costs aggregating about eighteen thousand dollars should all be adjudged against the state officers.

In actions at law, in the absence of a tender or statutory offer to confess judgment, the costs follow the judgment. In equity cases such is the general rule, but not the invariable one. The award as to costs is discretionary.

Two things influenced the court in dividing the costs herein.

First. Defendants are officials, and as officials are representatives. They have no personal interest in the litigation. This of itself is not enough to avoid the costs, but it is to be considered. It will be presumed that the legislature will appropriate a sufficient amount to protect these officers. But this is not always done. The last legislature appropriated $40,000.00 for these cases, which was but two thirds enough for the two years. The Master in Chancery and the lady stenographer gave a great deal of time, followed by very large, but justly owing bills, the one-half of which has been paid by the railways, and by the state nothing with the appropriation exhausted. Whether the other half is paid all depends upon what the legislature does.

379 Second. The more sufficient reason for dividing the costs is because of the extravagantly enormous record made in the cases. The Master gave many weeks to taking evidence, and many more weeks were given by the court in taking evidence. Both the Master and the Court were powerless to abbreviate the record, because the Supreme Court in the case of Blease vs. Garlington, 92 U. S., 1, and the Circuit Court of Appeals for this Circuit in case of Schubert vs. Woodward, 167 Fed. Rep. 47, 52, have held that Trial Courts must receive in equity cases, all evidence offered that is germane to the issues. I complained, and in effect gave warning many times to the parties, but without avail because of the prolixity of the record. Something like 15,000 pages of evidence were taken, when one-third would have been as strong a presentation of either side. Courts should impose penalties for this, and the only penalty is by way of costs. Both sides were at fault, and both sides should bear the burden. It does not follow that such a precedent will be one to plague. It is not a precedent to be followed except in cases where it ought to be followed.

2. Complaint is made because of the recital in my opinion that,

"It being a legislative act, and not a judicial one, this court cannot fix rates. It it could, two and one-half cent passenger rates would be fixed for the stronger roads, and three for the others. But that is for the legislature acting itself with experts, such as the state employed in these cases, or through a commission with like assistance."

My statement that "It being a legislative act, and not a judicial one, this court cannot fix rates," is not controverted by anyone. This being so, as of course, what I said as above is obiter dictum. But because it is dictum, is no reason whatever for not saying it, and still less a reason for now eliminating it from my opinion. The greater part of one of the greatest opinions ever written by the great Chief Justice (Marbury vs. Madison), was dictum. But even if it were possible, who would dare to mutilate that opinion? But two

380 years since there were published two very large volumes wholly covering dictum only of the United States Supreme Court. Those dicta were and are binding on no one, but they contain much of the cream of our jurisprudence. This dictum of mine is binding on no one. It is my opinion, and will stand as of value, or of no value as the profession and informed laymen fix the value

thereon. I believed it proper to say that the strong roads should have two and one-half cents per passenger per mile, and the weaker roads three cents. I could have fairly stated that the St. Louis and Hannibal, and the Kansas City, Clinton & Springfield Railroads should have four cents or more per passenger per mile.

I still adhere to those views, and entertaining them, I know of no reason for not stating them, with reasons for believing it was my duty to state them. Passengers, like consumers, have rights. One of those rights is to have fares fixed reasonably low. But the term reasonable is a comparative one. It must be in proportion to what it is worth, and the better the service, the more it is worth. And the public is entitled to have, with the right to demand, efficient service, provided always such is paid for. Much in argument was said by counsel on both sides as if an arbitrary flat rate is all that is involved, regardless of service and regardless of all other things. Whether the trains are expensive or inexpensive, daylight or night trains, through or local trains, main line or branch trains, roads through the hills of central Missouri, or the Ozarks, or over the prairies, and whether the trains carry few or many passengers, are matters largely passed over as if of no importance. To me they seem of great importance. So it is as to the greatly increased cost of materials compared with ten years ago. The average fare paid per year, aside from the low excusion rates, is less than six dollars per year, commercial travelers excepted. To reduce that to four dollars, thereby saving two dollars, is of course of importance. So are other matters of importance. Aside from having efficient service to be paid for at remunerative rates, the laboring men, the employés, have rights. They have the right to be well paid for their work, in day time and night time, sunshine and storm, during the excessive heat of the summer and the rigors of
381 winter. Their hazardous and most dangerous service entitles them to remunerative compensation, which they cannot have with meagre earnings of the roads. Evidences of humanity and kindly feeling for their fellow men need not be wholly displayed toward the man who pay- six dollars per year for passenger fares. A kindlier disposition would suggest an equitable division of sympathy. Thousands and thousands of them have already been "let out" because of decreased earnings, and more are to follow, with diminished compensation for those from necessity retained. What is the truthful answer to make these men, and who is to make this answer? It is doubtful if the legislature thought this out. I decline to modify my opinion as respects this.

3. It is contended that the court was in error in its original opinion in that the penalties of the statutes render them void.

Whether rates prescribed by statutes are valid or invalid, is a judicial question, and the legislature cannot prohibit the courts from passing thereon. This was so stated in the Minnesota Milk case, 134 U. S. And this cannot be done indirectly, by imposing such penalties as to terrorize the company, its officers and agents so that they do not dare to litigate the question. This was so held in ex parte Young but a year ago.

This question received but little attention from any of the counsel

or the court, and was but briefly discussed by the court in the opinion.

In the Consolidated Gas case in 146 Fed. Rep., 150, Circuit Judge Lacombe held that a penalty of $1,000.00 for each charge for gas in excess of the statutory or commission rate was prohibitive and a denial of the right to go into the courts. And on the final hearing of the same case in 157 Fed. Rep., 849, 881, a like holding is made. And in the same case on appeal, the Supreme Court held a year ago that the penalties were so excessive as to be void.

The discussion by Justice Brewer speaking for the court, in the case of Cotting vs. Kansas City Stock Yards, 183 U. S. 79, 99, is to the same effect, although the question was not decided. And a like discussion, with a like putting the question aside without a decision, is found in the Reagon case in 154 U. S.

382 And in the ex parte Young case, although the penalties were more severe than under the Missouri statutes, the question is at rest. The sole question is—Can a party be allowed to litigate a disputed question of fact as to property rights, without confiscation of all its property, and all of its agents being sent to jail, if the case is lost? Surely he can. Upon reflection and with much additional consideration, the holding now is that the section imposing penalties is void.

But this is largely an academic question, for the reason that the penalty section is easily separated from the main features of the statute. And I need not discuss the proposition that when separable, the void section does not render the entire statute void.

4. These cases as to freight were brought four years ago. Two years ago supplemental bills were filed, bringing forward the new freight rate statutes, and the passenger rate statute. Upon a hearing, by agreement of counsel on both sides, a temporary injunction was issued against the enforcement of the freight rate statute. The railways asked for a temporary injunction against the enforcement of the passenger rate statute. The Attorney General and his associates contested this, and were successful to the extent that the court ordered an observance of the statute for some months, until information from actual tests could be made. So that from the very inception of the case, it has been contended on the one side that the statute is invalid, and on the other side that the statute is valid. It therefore follows that this court has had jurisdiction for four years over all the parties, and over the entire subject matter of state earnings.

It is clear that this court having such jurisdiction should retain it over all the parties, and the subject matter, to the end that the decrees hereafter may be enlarged, or modified, as varying circumstances and the acts of the parties may require. Therefore the decrees should be so changed as to recite such reservations.

Kansas City, Missouri, April 17th, 1909.

383 UNITED STATES OF AMERICA, *sct*:

I, Adelaide Utter, Clerk of the Circuit Court of the United States for the Western Division of the Western District of Missouri, do

hereby certify that the above and foregoing is a full, true and complete copy of the record, assignments of errors and all proceedings in the cause wherein The Quincy, Omaha and Kansas City Railroad Company is complainant and John A. Knott, et al., are defendants, on the appeal of the defendants and the cross-appeal of the complainant, as required by the stipulation of parties on file in said cause, set out on pages 321 and 322 supra.

Witness my hand as clerk and the seal of said Court. Done at office in Kansas City, Missouri, this first day of May, A. D. 1911.

[Seal of the United States Circuit Court for the Western District of Missouri, Western Division.]

ADELAIDE UTTER, *Clerk*.

Endorsed on cover: File No. 22,768. W. Missouri C. C. U. S. Term No. 692. John A. Knott, H. R. Oglesby, and Frank A. Wightman, Railroad and Warehouse Commissioners, and Elliott W. Major, Attorney General of the State of Missouri, appellants, vs. The Quincy, Omaha & Kansas City Railroad Company. File No. 22,769. Term No. 693. The Quincy, Omaha & Kansas City Railroad Company, appellant, vs. John A. Knott, H. R. Oglesby, and Frank A. Wightman, Railroad and Warehouse Commissioners, and Elliott W. Major, Attorney General of the State of Missouri. Filed June 26, 1911. File Nos. 22,768 & 22,769.

(22,770 and 22,771.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

No. 694.

JOHN A. KNOTT, H. R. OGLESBY, AND FRANK A. WIGHTMAN, RAILROAD AND WAREHOUSE COMMISSIONERS, AND ELLIOTT W. MAJOR, ATTORNEY GENERAL OF THE STATE OF MISSOURI, APPELLANTS,

vs.

THE WABASH RAILROAD COMPANY.

No. 695.

THE WABASH RAILROAD COMPANY, APPELLANT,

vs.

JOHN A. KNOTT, H. R. OGLESBY, AND FRANK A. WIGHTMAN, RAILROAD AND WAREHOUSE COMMISSIONERS, AND ELLIOTT W. MAJOR, ATTORNEY GENERAL OF THE STATE OF MISSOURI.

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI.

INDEX.

	Original	Print
Citation to railroad company	*a*	1
Citation to Knott *et al.*	*c*	1
Bill of complaint	2	2
Exhibit A—Map	27	15

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., SEPTEMBER 19, 1911.

	Original.	Print
Restraining order	28	16
Order continuing restraining order	30	17
Appearances	33	19
Order of temporary injunction	34	20
Injunction bond	35	20
Demurrer of Knott, Rice, and Wightman, railroad commissioners	36	21
Demurrer of Herbert S. Hadley, attorney general	39	23
Demurrer of Joseph Sanderson	42	24
Demurrer of Sidney Smith	44	25
Demurrer of J. G. Peppard	46	26
Waiver of affidavits to demurrers	48	27
Order overruling demurrers	49	28
Joint answer of Knott, Rice, and Wightman, railroad commissioners	50	28
Answer of Herbert S. Hadley, attorney general	67	38
Joint and several answer of Joseph Sanderson *et al.*	84	48
Replication to answer of Knott *et al.*	89	52
Replication to answer of Herbert S. Hadley, attorney general	90	52
Replication to answer of Joseph Sanderson *et al.*	91	53
Motion of defendants for reference to master	92	54
Motion of complainants for oral hearing	93	55
Order of reference	96	58
Motion for leave to file amended and supplemental bill	98	59
Restraining order of June 13, 1907	99	60
Restraining order of June 14, 1907	100	60
Notice of motion to amend	102	61
Order granting leave to file amended and supplemental bill	103	62
Amended and supplemental bill	105	63
Order granting leave to file amendment to bill	119	75
Amendment to bill of complaint	120	76
Acknowledgments of service of subpœna	129	82
Joint demurrer of Knott, Wightman, and Oglesby, railroad commissioners	132	84
Demurrer of Herbert S. Hadley, attorney general	137	87
Joint and several demurrer of Joseph M. Patterson *et al.*	142	91
Joint and several demurrer of Joseph Sanderson *et al.*	144	92
Joint and several demurrer of Julius H. Lang *et al.*	146	93
Interlocutory report of master and order thereon	148	95
Order granting leave to amend amendment to bill of complaint	150	96
Order overruling demurrers	151	97
Joint answer of John A. Knott *et al.*	152	97
Answer of Herbert S. Hadley, attorney general	154	98
Replication to answer of Knott *et al.*	162	106
Replication to answer of H. S. Hadley, attorney general	163	107
Order as to hearing	164	108
Affidavit of T. F. Wharton	165	109
Exhibits A to J—Statements	167	111
Return of special master	177	117
Orders as to hearing	178	118
Stipulation and order to abide decision in No. 2998	191	129
Complainants' requests for findings of fact	193	130
Certificate of trial judge	243	166
Order of submission	248	170

	Original.	Print
Order substituting Elliott W. Major as attorney general in the stead of Herbert S. Hadley	249	171
Order as to statement of expert accountants	251	174
Orders as to answers	252	174
Findings of fact	253	175
Decree	280	197
Motion to modify decree	284	200
Amended motion to modify decree	286	200
Notice of motion to modify	288	202
Amended decree	289	203
Declinations to join in appeal	294	206
Defendants' assignment of errors	300	210
Defendants' petition for appeal	309	218
Defendants' bond on appeal	310	219
Order granting appeal	313	220
Complainant's assignment of errors	314	221
Complainant's petition for cross-appeal	318	223
Bond on cross-appeal	319	224
Order granting cross-appeal	321	225
Order extending time to file transcript	322	226
Stipulation as to transcript	323	226
Remarks of McPherson, judge, filed June 14, 1907	325	228
Remarks of McPherson, judge, filed June 17, 1907	328	229
Remarks of McPherson, judge, filed June 17, 1907	336	235
Opinion of McPherson, judge, filed March 31, 1908	342	239
Opinion of McPherson, judge, filed March 8, 1909	351	244
Supplemental opinion of McPherson, judge, filed April 17, 1909	381	264
Certificate	386	268

a *Citation.*

THE UNITED STATES OF AMERICA, *ss:*

The President of the United States to The Wabash Railroad Company, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States at the City of Washington, within thirty days from the date of this writ, pursuant to an appeal duly allowed by the Circuit Court of the United States for the Western Division of the Western District of Missouri, and filed in the clerk's office of said court on the 15th day of March, A. D. 1911, in a cause wherein John A. Knott, H. R. Oglesby and Frank A. Wightman, Railroad and Warehouse Commissioners, and Elliott W. Major, Attorney General of the State of Missouri, are appellants, and you are appellee, to show cause, if any, why the amended final decree rendered against the said appellants, as in the said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Smith McPherson, Judge of the Circuit Court of the United States for the Western Division of the Western District of Missouri, this 15th day of March, A. D. 1911.

SMITH McPHERSON, *Judge.*

THE UNITED STATES OF AMERICA,
Western District of Missouri, ss:

I hereby acknowledge due service of the above citation this 15th day of March, A. D. 1911.

FRANK HAGERMAN,
Solicitor for The Wabash Railroad Company, Appellee.

b [Endorsed:] 3000. Wabash R. R. Co. vs. John A. Knott, et al. Citation. Filed Mar. 15, 1911. Adelaide Utter, Clerk.

c In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 3000.

WABASH RAILROAD COMPANY, Complainant,
vs.
JOHN A. KNOTT, H. R. OGLESBY and FRANK A. WIGHTMAN, Railroad Commissioners, et al., Defendants.

The President of the United States to all the defendants of record in above entitled case:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States at the city of Washington, Dis-

trict of Columbia, within thirty days from the date of this writ, pursuant to an appeal duly allowed by the circuit court of the United States for the western division of the western district of Missouri, on March 15, 1911, as a cross appeal in a case where the Wabash Railroad Company is cross appellant and you are the cross appellees, and show cause, if any, why the amended final decree rendered against the said appellant as in the said appeal mentioned should not be granted, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Smith McPherson, Judge of the Circuit Court of the United States for the Western Division of the Western District of Missouri, this March 15th, 1911.

SMITH McPHERSON, *Judge.*

Due service of above citation accepted this March 15, 1911.

ELLIOTT W. MAJOR,
SANFORD B. LADD,
Solicitors for Appellees and Defendants in said cause.

d [Endorsed] No. 3000. Wabash Rd. Co. v. Jno. A. Knott et al. Citation. Filed Mar. 15, 1911. Adelaide Utter, Clerk.

1 UNITED STATES OF AMERICA, *sct:*

Be it remembered, that heretofore, to-wit, on the 16th day of June, A. D. 1905, a bill of complaint was filed in the office of the clerk of the Circuit Court of the United States for the Western Division of the Western District of Missouri, wherein The Wabash Railroad Company is plaintiff and John A. Knott, et al., are defendants.

Said bill of complaint is in words and figures as follows:

2 In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

THE WABASH RAILROAD COMPANY, Complainant,

vs.

JOHN A. KNOTT, JOSEPH P. RICE and FRANK A. WIGHTMAN, Railroad Commissioners of the State of Missouri; Herbert S. Hadley, Attorney-General of the State of Missouri, and Joseph Sanderson, J. S. Peppard, and Sidney Smith, Defendants.

Bill of Complaint.

To the Honorable, the Judges of the Circuit Court aforesaid:

Your orator, the Wabash Railroad Company, brings this, its bill of complaint, against each of the above named defendants, and thereupon avers:

I.

Your orator, the Wabash Railroad Company, is a consolidated

railway corporation, organized and existing under the laws of
3 Missouri, Illinois, Indiana, Ohio and Michigan, with its chief office in the city of St. Louis, state of Missouri. It is, with its railroad, engaged in state and interstate commerce, owning and operating lines of railway in Missouri and other states. Of the said lines the following are, and have for a long time been owned and operated by your orator in the state of Missouri, viz.:

A main line from the city of St. Louis to Harlem, near Kansas City, Missouri, a distance of about 275 miles; a main line from Moberly, in the state of Missouri, to the north line of the state, at a point in or near Coatesville, in Schuyler county, a distance of about eighty-seven and one-half miles; a main line from Brunswick to Chillicothe, a distance of about thirty-eight miles; a main line from Pattonsburg to the north line of the state near Elmo, in Nodaway County, a distance of about seventy-one miles; a main line from Centralia to Columbia, a distance of about twenty-two miles; a main line from Salisbury, Missouri, to Glasgow, a distance of about fifteen miles, and from Excelsior Springs Junction to Milwaukee Junction, a distance of about nine and one-half miles; also a leased line from Chillicothe to Pattonsburg, a distance of about forty-one and one-half miles; also under joint trackage agreements the following lines: From Harlem to Kansas City, a distance of about one and one-half miles; from Moberly to Hannibal, a distance of about seventy miles; and in addition thereto a number of small industrial or branch lines; the total mileage operated by your orator in the state of Missouri, being about 654 miles.

4 II.

This cause arises under the constitution and laws of the United States, for that it seeks to enjoin the enforcement and adoption as against your orator of the provisions, requirements and prohibitions in the act of the legislature of Missouri mentioned in paragraph VII hereof (hereinafter called the Act of 1905); said act being unconstitutional, violative of the provisions of the constitution of the United States and the amendments thereto, and contrary to the laws of the United States, all as hereinafter more particularly stated. The matter and amount in dispute exceeds, exclusive of interest and costs, the sum or value of two thousand dollars.

III.

The defendants, John A. Knott, Joseph P. Rice and Frank A. Wightman, constitute the duly elected, qualified board of railroad commissioners of the State of Missouri, and are citizens and residents respectively of Marion County, City of St. Louis, and Barry County, therein, their statutory official residence being in Cole County therein. The defendant, Herbert S. Hadley, is attorney-general of the State of Missouri, and a citizen and resident of Cole County therein. Each of said parties is, by the law of which the act of 1905 is a part, required to do and perform the special duties hereinafter mentioned.

IV.

Defendants, Joseph Sanderson, Joseph S. Peppard and Sidney Smith, all of whom are citizens and residents of the county of
5 Jackson, Missouri, are herein designated as shippers, each being a person engaged in shipping over your orator's road and other roads in the state to and from points therein the commodities, the rates of which are attempted to be limited by the said act of 1905. These defendants represent a class of shippers so numerous that it is impracticable to attempt to join them all, and the above named defendants are made parties hereto for the purpose of determining the rights as against your orators of all shippers under the said act of 1905.

V.

Article 4, of Chapter 12, of the Revised Statutes of Missouri, 1899, of which the Act of 1905 has become a part, made provision for the classification of railroads and freights and provision for maximum rates. Sections 1191, 1192 and 1193 thereof provide as follows:

SEC. 1191. Roads classified.—All railroads in the State of Missouri are hereby divided into three classes, to be known as class A, class B and class C. Class A shall include all through or trunk line railroads. Class B shall include all of the branch roads owned, leased or occupied by such through or trunk line railroad companies or corporations. Class C shall include all other railroads or parts of railroads owned, leased, or occupied, or which may hereafter be owned, leased or occupied, in this state, either wholly or in part.

SEC. 1192. Passenger charges regulated.—Any individual, company or corporation owning, operating, managing or leasing any railroad or part of a railroad in this state, in the several classifications as herein prescribed, shall be limited to a compensa-
6 tion per mile for the transportation of any person with ordinary baggage not exceeding one hundred pounds in weight as follows: In class A, not exceeding three cents per mile, and in classes B and C not exceeding four cents per mile; provided, that no such individual, company or corporation shall charge, demand or receive any greater compensation per mile for the transportation of children of the age of twelve years or under than one-half of the rate prescribed; and provided, further, that the rates for transportation herein prescribed may be reduced, as hereinafter provided.

SEC. 1193. Freight classified.—All freights hereafter transported upon any railroad or part of a railroad in this state are hereby divided into four general classes, to be designated as first, second, third and fourth classes, and into seven special classes, to be designated as classes D, E, F, G, H, I and J. Class D shall comprise all grain in car loads. Class E shall comprise flour in lots of fifty barrels or more, and lime in lots of twenty-four barrels or more. Class F shall comprise salt in lots of sixty barrels or more, and cement, water-lime and stucco in lots of twenty-four barrels or more. Class G shall comprise lumber, lath and shingles in car loads. Class H shall comprise live stock in car loads. Class I shall comprise agricultural implements, furniture and wagons. Class J shall comprise coal, brick, sand, stone,

railroad ties and cord wood and all heavy fourth-class articles in car loads; and in addition to the several articles in the said special classes shall be added other articles as and in the manner hereinafter prescribed, except in classes D, E, G and H, and all articles not before enumerated or subsequently set into said classes as hereinafter provided, shall be placed in and belong to the four general classes, to be classified by the railroad commissioners hereinafter to be provided.

7 Section 1194 fixed the maximum rates for the seven special classes of freight designated as classes D, E, F, G, H, I and J, respectively. The statutes of the state also provide for the election and qualification of the railroad commissioners aforesaid, and prescribe their special duties, among which special duties in relation to the adoption and enforcement of the said Act of 1905 are these: To require to be posted by each railroad company in the state in its depot or railroad station and to be filed in the office of the railroad commissioners a schedule of rates to be charged, which in no event must exceed the maximum rates at any time fixed by law, nor those maximum rates fixed by the act of 1905, which rates so shown by the schedules so filed with the railroad commissioners cannot be advanced except after ten days' public notice plainly stating the changes proposed to be made in the schedule, and the time when said changes will go into effect; to require to be likewise filed and published all joint tariff arrangements with other common carriers; to see that all such schedules of rates are observed by all common carriers; if and when the common carrier shall neglect or refuse for thirty days to file or publish its schedule as aforesaid as commissioners to make out and print such schedule for such carrier, delivering to it a copy thereof, which shall be likewise posted in the depots and stations; to enforce statutory provisions imposing severe penalties for a failure to publish and file said schedule; and to hear all complaints made by any person for a violation of any of said provisions of law, as well as to institute on its own motion any such complaint. The statutes of the state also especially provide for the adoption and enforcement of the provisions of the Act of 1905 by requiring the prosecuting attorney of each county to prosecute any carrier violating the provisions of the law aforesaid whenever directed

8 by the railroad commissioners, receiving for his services compensation equal to the amount allowed by law on forfeited recognizances, and the attorney general is required to assist in such prosecution and to prosecute other cases whenever directed by the railroad commissioners.

VI.

The legislature of the State of Missouri in 1903 passed an act herein called the Act of 1903, reading as follows:

SECTION 1. That chapter 12 of article 4 of the Revised Statutes of Missouri of 1899 be and the same are hereby amended by adding thereto two new sections, to be between sections 1194 and 1195 of said chapter, to be known as section- 1194*a* and 1194*b*, providing for the fixing, modifying and enforcing freight rates as follows:

SECTION 1194a. The board of railroad and warehouse commissioners are hereby authorized, empowered and required to fix, maintain and establish just and reasonable freight rates on all classes of freight from, to and between all points and stations upon and along all lines of railroads in this state; and said board is authorized and empowered to reduce, change or modify any and all such freight rates so fixed and established as hereinafter provided. And said board may, of its own motion, and shall, upon the sworn complaint of any shipper, mayor, councilman, alderman or trustee of any city, town or village, first giving five days' written notice to the railroad company affected or complained against, proceed to fix, establish, modify or reduce the freight rates or charges of any such road from, to or between any and all points or stations in Missouri; and any and all orders fixing, establishing, modifying or reducing any such freight rates or charges shall be the judgment of said board and constitute the legal rates or charges that such railroad company may collect for the transportation of freight from, to and between its stations in Missouri; and said board shall, immediately upon the fixing, establishing, modifying or reducing the freight rates or charges of any railroad company, notify such railroad in writing thereof; and said railroad shall comply with the orders and judgments of said board with reference to such freight rates or charges within ten days after such notice. And if any railroad fails, refuses or neglects to put the rates so ordered by said board into effect and operation within ten days after notice the board shall submit a certified copy of its order to the attorney general of the state with notice that such railroad (designating the same), has failed to comply therewith. And the attorney general, upon receipt thereof, shall immediately institute suit in the name of said board of railroad and warehouse commissioners against such railroad in the supreme court of the state, by mandamus or other proper remedy, to enforce said order of said board.

SECTION 1194b. All railroad companies doing business in this state shall, upon the request of the board of railroad and warehouse commissioners, furnish to said board copies of all its schedules of freight rates and charges, and all other papers and documents, including bills of lading and contracts for transportation of freight affecting in any way the transportation of freight within, into and from this state. And said board shall have full power and authority to examine all officers, agents and employés of said railroad companies, and all other persons, under oath or otherwise, to procure the necessary information to make just and reasonable freight rates or charges. And to ascertain if the freight rates so fixed by said board are being observed or violated. And said board shall have power to administer oaths, to issue subpœnas for persons and papers, examine witnesses and to enforce the same in like manner as the circuit courts of this state. And in the issuance and enforcement of the papers and processes above the jurisdiction shall be co-extensive with the state.

Approved April 6th, 1903.

There were then and there adopted sections 1194*a* and 1194*b* to become part of article 4 of chapter 12 of the Revised Statutes of Missouri, 1899, to be known as sections 1194*a* and 1194*b*, and to be inserted between sections 1194 and 1195 of the said Revised Statutes.

VII.

The legislature of the State of Missouri, at its session of 1905, passed the act herein called the Act of 1905, reading as follows:

Be it enacted by the general assembly of the state of Missouri; as follows:

SECTION 1. That section 1194 of the Revised Statutes of Missouri, 1899, concerning the regulation of freight charges being part of article IV, of chapter 12, entitled "Corporations, private," be and the same is hereby repealed and the following, to be known as sections 1194, 1194*a*, 1194*b*, of said Revised Statutes, be enacted in lieu thereof, so that said sections shall be collocated between existing sections 1193 and 1195 of said Revised Statutes of 1899.

11 SECTION 1194. No individual, company or corporation owning, operating, managing or leasing any railroad or part of railroad, designated in section 1191 as in classes A, B or C, shall demand, charge or receive a greater or higher rate for carrying from initial to terminal points in this state articles named in the several classes herein designated than is hereinafter provided for, namely: Class D, in car loads of 40,000 pounds, minimum weight, not exceeding five cents per one hundred pounds for the first twenty-five miles, and not exceeding one-half cent per hundred pounds for the second 25 miles or fractional part thereof, and not exceeding one-half cent per hundred pounds for each additional 25 miles or fractional part thereof. Class E, in car loads of 24,000 pounds minimum weight, not exceeding five cents per one hundred pounds for the first 25 miles, and not exceeding one-half cent per hundred pounds for the second 25 miles or fractional part thereof, and not exceeding one-half cent for each additional 25 miles or fractional part thereof. Class F, in car loads of 30,000 pounds minimum weight, not exceeding five cents per one hundred pounds for the first 25 miles, and not exceeding one-half cent per hundred pounds for the second 25 miles, or fractional part thereof, and not exceeding one-half cent per hundred pounds for each additional 25 miles, or fractional part thereof. Class G, in car loads of 30,000 pounds minimum weight, not exceeding five cents per one hundred pounds for the first 25 miles, and not exceeding one-half cent per hundred pounds for the second 25 miles, or fractional part thereof, and not exceeding one-half cent per hundred pounds for each additional 25 miles, or fractional part thereof. Class H, in car loads in common cars, measuring inside from 29 feet to and including 30 feet and 6 inches in length (to be known as standard cars), not exceeding $6.00 per car load for the first 25 miles, and not exceeding $3.00 per car load for the

12 second 25 miles, or fractional part thereof, and not exceeding $2.00 per car load for each additional 25 miles, or fractional part thereof, of over twelve miles. For the carriage of any of these articles comprising class H in cars of other lengths for the distances

above specified, the following percentages of the foregoing rates per car load shall not be exceeded, namely: In cars of length less than 29 feet, 94 per cent; in cars of length over 20½ feet to and including 32 feet, 104 per cent; in cars of length over 32 feet to and including 33 feet and 9 inches, 107 per cent; in cars of length over 33 feet and 9 inches to and including 36 feet, 110 per cent; in cars of length over 36 feet to and including 38 feet, 113 per cent; in cars of length over 38 feet to and including 40 feet, 116 per cent; in cars of length over 40 feet to and including 42 feet, 125 per cent; in cars of length over 42 feet to and including 44 feet, 135 per cent; in cars of length over 44 feet, 140 per cent of the rates herein specified for cars of the standard length of 29 feet to and including 30 feet and 6 inches shall not be exceeded. All of the foregoing lengths to be taken by inside measurements. Class I, in car loads of 20,000 pounds, minimum weight, not exceeding $14.00 per car load for the first 25 miles and not exceeding $2.00 per car load for the second 25 miles, or fractional part thereof, and not exceeding $2.00 per car load for each additional 25 miles, or fractional part thereof. In computing the rate of freight according to the provisions of this article the distance shall be computed from the point where it is received to the point of destination in the state, notwithstanding it may pass from one road to another.

SECTION 1194*a*. That for the violation of the foregoing sections the railroad company so offending shall forfeit and pay to any person thereby affected the freight rate charged, demanded or
13 received in excess of the rates prescribed in said section, together with all actual damages caused thereby, to be recovered in any court having jurisdiction thereof by the existing law. And if the plaintiff in such action recover judgment therein, the court shall treble the same and the plaintiff shall on motion be allowed a reasonable attorney's fee for bringing the action.

SECTION 1194*b*. All acts and parts of acts, and all rules and regulations, freight schedules, classifications and groupings by railroad companies or the railroad and warehouse commissioners of this state in conflict with the provisions of this act are hereby repealed and declared void.

Said act, under the constitution of the state of Missouri, will take effect on the 16th day of June, 1905, which will be ninety days after the adjournment of the session of the legislature at which the act was passed. The rates now being lawfully charged by your orator for the transportation of freight of the character mentioned in the said act are shown in schedules now on file with the railroad commissioners and posted in your orator's depots and railroad stations, and are far in excess of the maximum rates fixed in said act of 1905, so that when said act becomes effective, if permitted to be enforced, it will require such a reduction in your orator's said rates as to make imperative a change in the said schedule, which change your orator does not propose to make, and cannot make without jeopardizing its property interests. The railroad commissioners propose and threaten to, and will, unless enjoined herein, enforce the special provisions of the statute of the state for the enforcement of said Act of 1905 by entering upon investigations, both upon their

own instigation and upon the complaint of shippers, and by
14 determining and adjudging your orator's present schedule of rates posted and filed as aforesaid to be unreasonable, unjust and extortionate for the sole reason that the said rates are higher than those prescribed by the said Act of 1905, and by requiring under the pain of large penalties, threatened to be enforced, your orator to file and publish a new schedule fixing rates not in excess of those mentioned in said Act of 1905. Besides which, said railroad commissioners propose, as specially required by law, to file, post and publish as your orator's said schedule the maximum rates fixed in said act, if and when your orator refuses so to do, and they propose to direct each of the prosecuting attorneys in each of the counties through which the line of your orator runs to prosecute and recover of your orator the large and excessive penalties provided by law, and to direct the defendant, the attorney general, to assist in such prosecutions, and to direct the defendant attorney general to prosecute your orator and recover the penalties provided by law for its failure to comply with the orders which the railroad commissioners propose from time to time to make in investigations instituted for the enforcement of said Act of 1905 for the purpose of compelling your orator to adopt a rate in accordance therewith. Said prosecuting attorneys and attorney general will, unless the defendants are restrained herein, conduct said prosecutions and seek to recover said penalties.

The shippers along the line of your orator's railroad are very numerous and are daily engaged in making and receiving shipments to and from points in Missouri of freight of the special classes
15 designated in the act of 1905, so that unless restrained by this court there will be instituted by them a multiplicity of suits to recover of your orator treble damages sustained, together with attorney's fees in each case. Said parties being so numerous, and the causes of action which will accrue so many, if the act of 1905 be enforced, that it is not practicable to make more than part of said shippers defendants hereto, but all other shippers in the counties in the state where your orator's lines of road extend, are likewise interested with those named as defendants herein, so that such as are named as such defendants should defend for all those having like interest, any such omitted party being permitted to become a defendant herein if so desired, to the end that all persons having a like interest will be bound by the decree to be entered herein, and the court have an opportunity to determine once for all the validity of said act of 1905.

VIII.

Said act of 1905 is invalid and inoperative and of no force and effect, for each of the following reasons:

(*a*) It fixes rates confiscatory in their nature, unreasonable in amount, insufficient to permit your orator to operate its property in Missouri without loss, making it impossible for freight to be carried by your orator between points in Missouri at any profit, all of which is contrary to and violative of the provisions of the constitution of the United States, and particularly of the fourteenth amendment

thereto, prohibiting the taking of property without the due process of law, and guaranteeing to all persons equal protection of the
16 laws, all of which is more particularly set forth in paragraphs X and XI hereof.

(*b*) It is invalid, as alleged in paragraphs XII and XIII hereof, whereby it is violative of said amendment to the constitution of the United States.

(*c*) It provides that in computing the rate of freight the distance shall be computed from the point where it is received to the point of destination in the state, notwithstanding it may pass from one road to another. This impairs your orator's freedom of contract and fixes a rate for it based upon carriage over the line of another road whereby the provisions of the federal constitution and the amendments thereto hereinbefore referred to are violated, and the freedom of contract, guaranteed by section 4, article 2 of the state constitution, denied.

(*d*) It provides in section 1194 that no individual, company or corporation owning, operating, managing or leasing any railroad or part of railroad designated in section 1191 as in classes A, B, or C shall demand, charge or receive a greater or higher rate for carrying from initial to terminal points in this state articles named in the several classes therein designated than as therein provided for, but it also provides in section 1194*a* that the penalty for a violation of the act shall be enforced only against railroad companies, thereby exempting individuals from such penalties. This is a discrimination between individuals and companies, and denies to your orator the equal protection of the laws guaranteed it by the fourteenth amendment to the Constitution of the United States.

(*e*) It attempts to adopt and create as part of article 4 of
17 chapter 12 of the Revised Statutes of Missouri, 1899, two sections called sections 1194*a* and 1194*b*, when the act of 1903 adopted sections so numbered as part of the same article and chapter. There was by the act of 1905 no repeal or attempted repeal of said act of 1903. The act of 1905 cannot be treated as amendatory to the act of 1903, because it is insufficient, since it does not in any wise comply with the provisions of section 34, article 4, of the Constitution of the State of Missouri, which provides as follows:

"No act shall be amended by providing that designated words thereof be stricken out, or that designated words be inserted, or that designated words be stricken out and others inserted in lieu thereof; but the words to be stricken out, or the words to be inserted, or the words to be stricken out and those inserted in lieu thereof, together with the act or section amended, shall be set forth in full as amended."

The act is, therefore, invalid because the law as it now stands is uncertain, there being two separate enactments upon two different subjects designated as sections 1194*a* and 1194*b* of article 4 of chapter 12 of the Revised Statutes of 1899.

IX.

Your orator owns and operates in the states of New York, Ohio, Indiana, Illinois, Missouri, Iowa and Nebraska, and in the Dominion

of Canada, a total main track mileage of about 2,517 miles, shown upon the map hereto attached, marked exhibit "A," and made part of this bill, which entire mileage constitutes and is operated and managed as one railroad system; that its railroad system embraces various side, industrial and branch tracks, terminals and ter-
18 minal facilities, not included in the above mileage, at various cities and towns through and into which your orator's lines of railroad run, all of which are necessary to the operation thereof; that in acquiring, constructing and equipping said railroad properties, there was necessarily and fairly expended large sums of money therefor, which included the proceeds of your orator's present bonded indebtedness, amounting to upwards of $100,500,000.00, and of its capital stock issued for its par value to the amount of $62,000,000.00, being $38,000,000.00 of common stock and $24,000,000.00 of preferred stock; that said bonded indebtedness includes $3,500,000.00 of bonds issued July 1, 1889, known as Debenture Bonds, Series A, and $26,500,000.00 of bonds issued on the same date, known as Debenture Bonds, Series B, all of which debenture bonds are secured by mortgage upon your orator's lines of railroad and other properties, including those situate in the state of Missouri, and all bear interest at 6 per cent. per annum, payable semi-annually from your orator's net earnings.

And your orator alleges that all its said properties were constructed and acquired at a fair and reasonable cost; that its lines of railroad were judiciously located, and all of them have at all times been properly and economically managed and operated; that all your orator's lines in Missouri secure a proportional benefit from the remainder of the system, and the value of the property in Missouri, as well as its earnings and capacity to serve the public, are proportionately increased thereby; but that its net earnings upon business in the state of Missouri have not been greater than such earn-
19 ings in any other of the states above mentioned, and that your orator's gross earnings are and have been for several years last past wholly insufficient and inadequate to pay its reasonable fixed charges, operating expenses and cost of maintenance and betterments, equipment and other facilities necessary to meet the needs of the public and the requirements of the law, and that notwithstanding the business of your orator was larger for several years last past than it will be for the present year, it has not for several years last past paid or been able to pay from its earnings or otherwise any interest on any of said debenture bonds, Series A, and has never at any time since the issuance of said debenture bonds, Series B, paid, or been able to pay, from its earnings or otherwise, any interest whatever on any of said last-named bonds, and has never since its organization on the first day of August, A. D. 1889, paid, or been able to pay, from its earnings or otherwise, any dividend or return whatsoever upon any of its aforesaid capital stock, common or preferred; so that your orator has not been, and is not now, able to earn or obtain any fair return upon its properties or business as a common carrier, or upon the monies fairly and in good faith invested therein, in the state of Missouri, under the rules and charges heretofore

fixed, authorized and charged in said state, without the reductions contemplated by said act of 1905.

X.

The rates now charged by your orator for state shipments of the classes of freight mentioned in the act of 1905 are in excess of the maximums therein fixed. If, for the classes of freight mentioned in the act of 1905, charges should be by your orator made at the maximum rates therein fixed for state shipments, your orator would be required to do such business not only without profit, but at a loss and without any return upon its investment in this state. Such rates in said act of 1905 mentioned are unjust, unreasonably low, confiscatory in their nature and will not make any return upon the investment in the property of your orator in this state. Taking the gross receipts of all the state business of whatsoever kind which your orator does, can or will do in Missouri when charging the maximum rates fixed by the act of 1905 for the classes of freight therein mentioned, and deducting from the total receipts the cost of doing such business in the state, there will not be sufficient to pay operating expenses, and there will not be left any sum as profit or as a return upon the value of the property of your orator devoted to the use of such business in the state.

The maximum rates for each class of freight mentioned in the act of 1905 are not sufficient to pay the cost of the carriage thereof.

XI.

Your orator further represents and shows that its tariff of freight charges which was in effect in the state of Missouri at the time said act of 1905 was passed and approved, did not and does not provide your orator with a gross annual income from the operation of all its lines of railroad in the state of Missouri on intra-state traffic, sufficient in the aggregate to pay its operating and maintenance expenses in said state in connection therewith, and did not furnish a sufficient sum for that purpose for many years prior to the passage and approval of said act of 1905.

Your orator further represents and shows that the reduction in rates under said act of 1905 will not increase the local traffic, and the volume of state and local business will not be more in 1905 than it was in 1904, but will, as your orator believes, be less in the year 1905 than for the previous several years, while the expense of doing such business will be as great, and if in the future said business increases, there will be a proportional increase in said expenses.

If for the classes of freight mentioned in the act of 1905 your orator should charge the maximum rates therein fixed, its total gross receipts from local or state traffic in Missouri will be materially reduced, while the expenses aforesaid will not be lessened, which makes the attempted reduction in both gross and net receipts unfair and unjust, and prevents a fair return upon the investment in your orator's said property, and the enforcement of said act will compel your

orator to do its local and state business without any fair or reasonable profit thereon.

XII.

There are in this state carrying therein the classes of freight mentioned in said act, and hence affected thereby, the following companies owning lines of railroad:

The Chicago & Alton Railway Company, the St. Louis Southwestern Railway Company, the St. Louis & San Franciso Railway Company, the Missouri Pacific Railway Company, the St. Louis, Iron Mountain & Southern Railway Company, the Kansas
22 City Southern Railway Company, the Chicago, Rock Island & Pacific Railway Company, the Chicago, Burlington & Quincy Railway Company, the St. Joseph & Grand Island Railway Company, the Chicago Great Western Railway Company, the Chicago, Milwaukee & St. Paul Railway Company, the Atchison, Topeka & Santa Fe Railway Company, the St. Louis & Hannibal Railway Company, the Missouri, Kansas & Texas Railway Company.

Each and all of said companies claim that the maximum rates fixed by said Act of 1905 are confiscatory in their nature, and if charged would result in said company doing its state business without any profit, which, as a fact, is true. Each of said companies has filed or will at once file a bill similar to that now presented by your orator. Even if in this cause it should be held that such maximum rates should be valid as against your orator, yet, as a matter of fact, same are unreasonably low as against each of said other companies, and will not permit either of said companies to make a profit upon its state business, and therefore said act is invalid as against said company. This being true, the act, even if held valid as to your orator, is unconstitutional, because it would thereby become discriminatory in that it would not apply alike to all persons or corporations operating railroads in this state, whereby the provisions of the Constitution of the United States, and the amendments thereto hereinbefore mentioned are violated.

XIII.

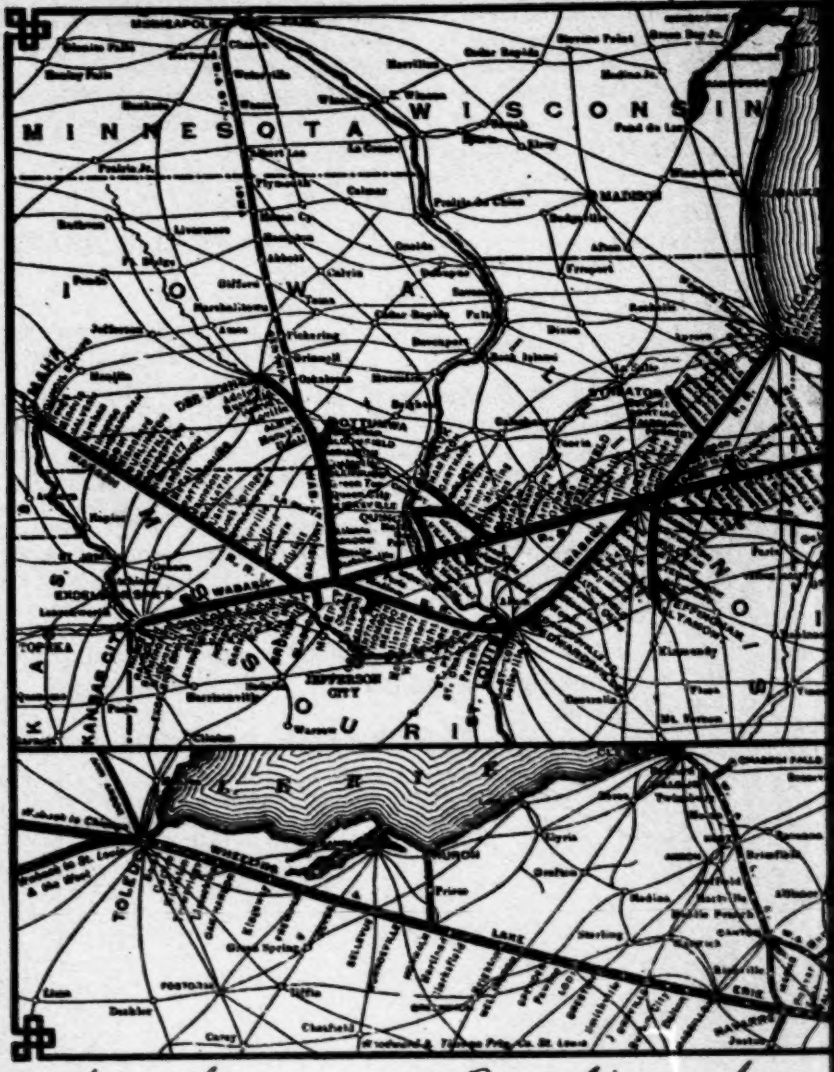
Said act of 1905 fixes and establishes maximum rates which are unjust, unreasonable and unconstitutional in this: The cost
23 of transporting live stock is greater than that of any of the other commodities in which a reduction is made, yet said act reduces the rate thereon on an average of 33 per cent., while the reduction in rates on salt and cement is only 18 per cent., and in the case of lumber, lath and shingles of 9 per cent. The different articles transported on your orator's railway have been arranged in classes according to cost of carriage, price, risk of injury, bulk, volume of traffic and other circumstances well understood, and have remained in substantially the same classes for many years, which has been recognized, approved and enacted into law by the statutory classification in effect in Missouri since 1893, and as required by its railroad commissions. The unequal, partial, arbitrary reduction in rates upon articles affected by said Act of 1905 as

compared with other commodities and between the different commodities themselves included in said act not only works an injustice between the shippers, purchasers, and manufacture-s of the State of Missouri and deprives them of their property without due process of law and deprives them of the equal protection of the laws, but likewise operates to deprive your orator of its property without due process of law and deprives it of the equal protection of the laws in that the legislature, having established maximum rates of charges for the transportation of all kinds of property, which are presumably fair and reasonable, now attempts to further regulate the affairs of your orator and to require it to discriminate in favor of certain persons and shippers and to give them a right of transportation for a less rate
24 than the general rate heretofore fixed by law and less than is just and reasonable in view of the cost to the carrier and the value of the service rendered to the shipper.

In consideration whereof, and forasmuch as your orator is remediless in the premises, and by the strict rules of the common law can only have relief in a court of equity, where matters of this kind are properly cognizable and relievable, your orator prays: First, that the said act of the legislature of Missouri set forth in paragraph VII of this bill, and for convenience called the Act of 1905, be declared unconstitutional, unenforcible and not binding upon your orator. Second, that the defendants, John A. Knott, Joseph P. Rice and Frank A. Wightman, as railroad commissioners of the State of Missouri, their successors in office, agents and servants, be temporarily and permanently enjoined and restrained from taking any step to put in force the maximum rates mentioned in said Act of 1905; from requiring your orator to post same at any place or file same with them; from receiving a schedule thereof to be filed with them; from taking or making out, or printing or delivering any schedule of rates for your orator containing the maximum rates fixed by said act; from instituting or permitting any investigation of any complaint that any rate is unreasonable, extortionate or unjust because higher than the maximum rate fixed by said Act of 1905; from directing the attorney general of the state or any prosecuting or other attorney therein to prosecute or assist in prosecuting your orator, directly or indirectly, for any failure to file the schedule adopt-
25 ing the said maximum rates, or for any failure to recognize, adopt or comply with said act of 1905. Third, that defendant, Herbert S. Hadley, the attorney-general, be temporarily and permanently enjoined and restrained from prosecuting or assisting in any suit or action against your orator to enforce against it in any action, directly or indirectly, any penalty in any wise dependent or based upon the failure of your orator to recognize and abide by the said Act of 1905. Fourth, that the defendants, Joseph Sanderson, J. S. Peppard, and Sidney Smith, and all other shippers affected by this proceeding be temporarily and permanently enjoined and restrained from instituting any action under said statute, or taking any steps to collect any penalties or damages for the alleged violation of said Act of 1905. Fifth, that your orator have such other and further relief as may be just and equitable.

Nos. 694 & 695
Knott et al.
v
Wabash R.R. Co.
} J. M.

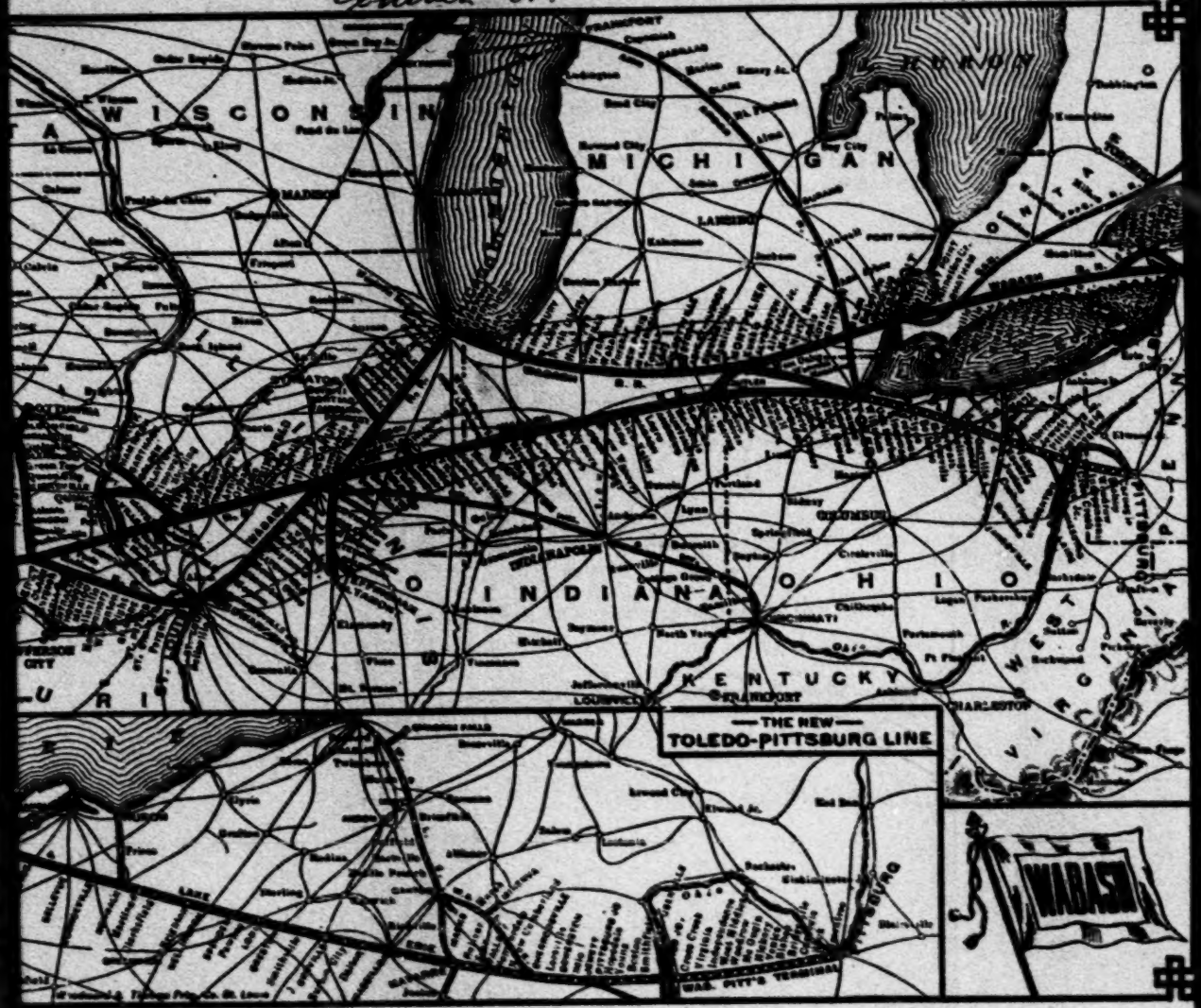
Exhibit



Note – Green and Red lines show
Green lines show portion in

695
4. M.

Exhibit A.



and Red lines show whole system
lines show portions in Missouri.

And may it please your Honors to grant unto your orator a writ of subpœna of the United States of America, issuing out of and under the seal of this Honorable Court, directed to the said John A. Knott, Joseph P. Rice and Frank A. Wightman, railroad commissioners of Missouri; Herbert S. Hadley, attorney general of the state of Missouri; Joseph Sanderson, J. S. Peppard and Sidney Smith, and commanding them and each of them on a day certain therein to be named and under a certain penalty, to be and appear before this honorable court, then and there to answer, but not under oath, such oath being expressly waived, all and singular the premises, and to stand to, perform and abide by such order, direc-
26 tion and decree as may be made against them in the premises.

And your orator will ever pray, etc.

THE WABASH RAILROAD COMPANY,
By WELLS H. BLODGETT AND
C. N. TRAVOUS, *Its Solicitors.*

FRANK HAGERMAN,
Of Counsel.

STATE OF MISSOURI,
City of St. Louis, ss:

I, E. B. Pryor, upon oath say, I am assistant to the president of the Wabash Railroad Company, complainant in above entitled bill, and as such officer have general charge of the accounts, and have knowledge of the traffic operations of said company, and of the matters and things mentioned in said bill, which I have read. I know the contents thereof, and the same are true of my own knowledge, except as to those matters therein stated upon information and belief, and as to those matters I believe them to be true.

E. B. PRYOR.

Subscribed and sworn to before me this 15th day of June, 1905.

[SEAL.] LILLIAN F. BONVILLE,
Notary Public.

My commission expires August 23, 1908.

(Here follows map marked p. 27.)

28 Afterwards, to wit, on the 16th day of June, A. D. 1905, a restraining order was filed and entered of record. Said restraining order is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 3000.

THE WABASH RAILROAD COMPANY, Complainant,
vs.
JOHN A. KNOTT, JOSEPH P. RICE and FRANK A. WIGHTMAN, Railroad Commissioners of the State of Missouri; Herbert S. Hadley, Attorney General of the State of Missouri, and Joseph Sanderson, J. S. Peppard, and Sidney Smith, Defendants.

Restraining Order.

The original bill of complaint having been this June 23, 1905, by the solicitors for complainant duly presented, and the court being fully advised in the premises, orders and decrees: Complainant's application for temporary injunction herein is set down for hearing at the United States Circuit Court room in Kansas City, Missouri, on June 26, 1905, at 10 o'clock a. m., or as soon thereafter as it is convenient for the court to hear the same.

In the meantime, and until the further order of court herein, each and all of the above named defendant railroad commissioners, their agents, servants and successors, are restrained from taking any steps to put in force the maximum rates mentioned in the act of the legislature of the State of Missouri, approved April 15, 1905, and entitled "An Act, entitled 'An act to amend chapter 12 of the Revised Statutes of Missouri, revision of 1899, entitled "Corporations, private," by repealing section 1194 of said Revised Statutes, being part of article IV of said chapter concerning railroad classification—

29 charges—commissioners, and to enact in lieu thereof the following new sections providing for the regulation of freight charges by railroads and the recovery of penalties for the violation thereof' "; from requiring complainant to post said maximum rates at any place, or to file same with them; from requiring a schedule thereof to be filed with them; from taking or making out, or printing or delivering any schedule of rates for complainant containing the maximum rates fixed by said act; from instituting any investigation of any complaint that any rate is unreasonable, extortionate or unjust because higher than the maximum rate fixed by said act; from directing the attorney general of the state, or any prosecuting attorney therein to prosecute or assist in prosecuting complainant directly or indirectly for any failure to file a schedule adopting said maximum rates; or for any failure to recognize, adopt or comply with said act.

And in the meantime, and until the further order of court herein, the above named attorney general and his assistants and successors

are restrained from bringing any suit or action against complainant to enforce against it, directly or indirectly, any penalty in anywise dependent or based upon the failure of complainant to recognize or abide by the said act of the legislature.

And in the meantime and until the further order of court herein, the defendants John A. Knott, Joseph P. Rice, and Frank A. Wightman, Railroad Commissioners of the State of Missouri; Herbert S. Hadley, Attorney General of the State of Missouri; William T. Kemper, and Alexander McKenzie, and all other shippers affected by this proceeding, are restrained from instituting any action, or taking any steps to collect any penalties for the alleged violation of said act of 1905.

(Signed) JNO. F. PHILIPS, *Judge.*

Received copy of foregoing restraining order this — day of June, 1905, and the undersigned defendants enter their appearances in said case as of the August, 1905, rules.

30 Afterwards, to-wit, on the 27th day of June, 1905, the following Order continuing Restraining Order was filed and entered of record:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 2988.

ST. LOUIS AND SAN FRANCISCO RAILROAD COMPANY, Complainant,

vs.

HERBERT S. HADLEY, Attorney General of the State of Missouri, and Joseph P. Rice, John A. Knott, and Frank A. Wightman, Railroad Commissioners of the State of Missouri, et al., Defendants.

No. 2989.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, Complainant,

vs.

SAME, Defendants.

No. 2990.

THE ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, Complainant,

vs.

SAME, Defendants.

No. 2991.

THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY, Complainant,

vs.

SAME, Defendants.

No. 2992.

THE ST. LOUIS, KANSAS CITY AND COLORADO RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

No. 2993.

THE KANSAS CITY SOUTHERN RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

31 No. 2994.

THE ST. LOUIS & HANNIBAL RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

No. 2995.

THE MISSOURI PACIFIC RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

No. 2996.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

No. 2997.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

No. 2998.

CHICAGO, BURLINGTON & QUINCY RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

No. 2999.

QUINCY, OMAHA AND KANSAS CITY RAILROAD COMPANY, Complainant,
vs.
SAME, Defendants.

No. 3000.

THE WABASH RAILROAD COMPANY, Complainant,
vs.
SAME, Defendants.

No. 3001.

THE ST. JOSEPH & GRAND ISLAND RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

32 No. 3002.

KANSAS CITY, CLINTON & SPRINGFIELD RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

No. 3003.

CHICAGO GREAT WESTERN RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

No. 3004.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

No. 3006.

THE CHICAGO & ALTON RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

Order.

The application of complainants in above cases for temporary injunction coming on for hearing, this June 27th, 1905, complainants appearing by Frank Hagerman, their solicitor, and the Attorney General in person. At the request of the latter it is ordered that the said application be continued till July 8, 1905, and until further order of court the restraining orders heretofore issued shall continue in force.

(Signed) JNO. F. PHILIPS,
(Signed) SMITH McPHERSON, *Judges.*

33 Thereupon a copy of the restraining order was duly issued, and the same was on the 8th day of July, 1905, returned into court with the following endorsement:

Received copy of the foregoing restraining order this 22nd day of June, 1905, and the undersigned defendants enter their appearances in said case as of the August 1905, Rules.

J. G. PEPPARD.
JOSEPH SANDERSON.
J. SIDNEY SMITH.

34 Afterwards, to-wit, on the 12th day of July, 1905, the following order continuing restraining order was filed and entered of record, to-wit:—

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. —.

—— ——, Complainant,
vs.
HERBERT S. HADLEY, Attorney General; JOSEPH P. RICE, JOHN A. Knott and Frank A. Wightman, Railroad Commissioners, et al., Defendants.

Order.

This cause came on for hearing this 12th day of July, 1905, upon complainant's application for temporary injunction. The complainant, the attorney general and the defendant railroad commissioners appeared by counsel; the other defendants having been notified of the hearing; and the court being fully advised in the premises, orders and adjudges:

1. The restraining order heretofore issued herein shall continue and remain in force as a temporary injunction.

2. The complainant shall, on or before the 25th day of July, 1905, file herein an injunction bond in the sum of Ten Thousand dollars, to be approved by a judge or a clerk of this court, the defendants consenting to accept the individual bond of the complainant, conditioned to pay, in case said injunction be dissolved, all damages ascertained herein to have been sustained by the defendants or any of them, or any person becoming a defendant herein.

(Signed) JNO. F. PHILIPS, *Judge.*

35 Afterwards, to-wit, on the 25th day of July, 1905, the Injunction Bond was approved and filed. Said Injunction Bond is in words and figures as follows, to-wit:—

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. —.

THE WABASH RAILROAD COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General; JOSEPH P. RICE, JOHN A. Knott and Frank A. Wightman, Railroad Commissioners, et al., Defendants.

Injunction Bond.

Know all men by these Presents, That the above complainant is held and firmly bound to above named defendants in the penal sum

of Ten Thousand dollars ($10,000) well and truly to be paid in lawful money of the United States, for the payment of which it binds itself, its executors, administrators, successors and assigns.

This bond is made upon these conditions:

Whereas, the Court in above entitled cause made an order on July 12, 1905, granting a temporary injunction.

Now if said obligor pays, in case said injunction be dissolved, all damages ascertained herein to have been sustained by the defendants or any of them, or any person becoming a defendant herein then this obligation to be void; otherwise in force and effect.

Witness the hand and seal of said party this July 12th 1905.

THE WABASH RAILROAD COMPANY,
[SEAL.] By E. B. PRYOR, *Assistant to President.*

Attest:

E. B. PRYOR,
Assistant Secretary.

The foregoing bond is approved this 25 day of July, 1905, the appearing defendants waiving the necessity of any surety signing the bond.
ADELAIDE UTTER, *Clerk.*

36 Afterwards, towit, on the 7th day of August, A. D. 1905, the joint demurrer of John A. Knott et al., was filed.

Said demurrer is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 3000.

THE WABASH RAILROAD COMPANY, Complainant,
vs.
JOHN A. KNOTT, JOSEPH P. RICE and FRANK A. WIGHTMAN, Railroad Commissioners of the State of Missouri; Herbert S. Hadley, Attorney General of the State of Missouri, and Joseph Sanderson, J. S. Peppard, and Sidney Smith, Defendants.

The Joint Demurrer of John A. Knott, Joseph P. Rice and Frank A. Wightman, Railroad Commissioners of the State of Missouri, Three of the Above-named Defendants, to the Bill of Complaint of The Wabash Railroad Company, the Above Named Complainant.

These defendants, respectively, by protestation, not confessing or acknowledging all or any of the matters or things in the said bill of complaint contained, to be true, in such manner and form as the same are therein and thereby set forth and alleged, demur to the said bill, and for causes of demurrer show:

1. That it appears by the complainant's own showing by the said

bill, that it is not entitled to the relief prayed by said bill against these defendants, or either of them.

37 2. That said bill of complaint of the complainant is wholly without equity.

3. That it does not appear from said bill of complaint that charges for the transportation, between points within this State, of such articles of freight, maximum rates for the transportation of which are not fixed by said Act of 1905, might not or could not have been established by the complainant, if it had chosen to make any effort to do so, or by said Board of Railroad Commissioners, if it had been permitted by the complainant to do so, at such rates as would have been reasonable and just, both to the complainant and to the public, observance of which and of the provisions of the Act of 1905, in the transportation by complainant of its entire intra-state traffic, would, as a whole, have rendered to the complainant a fair and reasonable profit for the service of transporting the same. The complainant has made no effort or attempt to readjust its schedules of freight rates, as a whole, with a view of complying with the requirements of said Act of 1905, nor has it afforded to the said Board of Railroad Commissioners any opportunity, on its part, of making such effort, but, on the contrary, by filing the bill of complaint herein on the day said Act of 1905 took effect, and obtaining the restraining order herein, before said Board of Railroad Commissioners could, by any possibility, have taken any action in the direction of establishing freight rate schedules for intra-state traffic, which, considered as a whole, would produce a reasonable compensation to the complainant for its service, has prevented said Board from making any such effort.

38 4. That said bill of complaint is deficient for want of certainty in its averments, in this, that it fails to show the amount of the complainant's gross annual income from the operation of its lines of railroad in the State of Missouri, in transporting intra-state traffic, or the amount of its operating and maintenance expenses in said State in connection therewith, for any year prior to the passage and approval of said Act of 1905; and in this, that said bill of complaint fails to show to what extent or in what amount, if any, the total gross receipts of the complainant from local or intra-state traffic in Missouri, will be reduced.

Wherefore, and for divers other good causes of demurrer appearing on said bill, these defendants demur thereto, and they pray the judgment of this honorable Court whether they shall be compelled to make further or any answer to the said bill; and they humbly pray to be hence dismissed with their reasonable costs in their behalf sustained.

HERBERT S. HADLEY,
Attorney General;
JOHN KENNISH,
SANFORD B. LADD,
Solicitors for Defendants.

SANFORD B. LADD,
Of Counsel.

I hereby certify that the foregoing demurrer is, in my opinion, well founded in point of law.

SANFORD B. LADD,
Of Counsel for Defendants.

39 Afterwards, to-wit, on the 7th day of August, 1905, the demurrer of Herbert S. Hadley, Attorney General, was filed. Said demurrer is in words and figures as follows, to-wit:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 3000.

THE WABASH RAILROAD COMPANY, Complainant,
vs.
JOHN A. KNOTT, JOSEPH P. RICE and FRANK A. WIGHTMAN, Railroad Commissioners of the State of Missouri; Herbert S. Hadley, Attorney General of the State of Missouri, and Joseph Sanderson, J. S. Peppard, and Sidney Smith, Defendants.

The Demurrer of Herbert S. Hadley, Attorney General of the State of Missouri, One of the Above-named Defendants, to the Bill of Complaint of The Wabash Railroad Company, the Above Named Complainant.

This defendant, by protestation, not confessing or acknowledging all or any of the matters or things in the said bill of complaint contained, to be true, in such manner and form as the same are therein and thereby set forth and alleged, demurs to the said bill, and for causes of demurrer shows:

1. That it appears by the complainant's own showing by the said bill, that it is not entitled to the relief prayed by said bill, or any relief whatever, against this defendant.

2. The said bill of complaint of the complainant is wholly without equity.

3. That it does not appear from said bill of complaint that charges for the transportation, being between points within this
40 State, of such articles of freight, maximum rates for the transportation of which are not fixed by said Act of 1905, might not or could not have been established by the complainant, if it had chosen to make any effort to do so, or by said Board of Railroad Commissioners, if it had been permitted by the complainant to do so, at such rates as would have been reasonable and just, both to the complainant and to the public, observance of which and of the provisions of the Act of 1905, in the transportation by complainant of its intra-state traffic, would, as a whole, have rendered to the complainant a fair and reasonable profit for the service of transporting the same. The complainant has made no effort or attempt to readjust its schedules of freight rates, as a whole, with a view of complying with the requirements of said Act of 1905, nor has it af-

forded to the said Board of Railroad Commissioners any opportunity on its part, of making such effort, but, on the contrary, by filing the bill of complaint herein on the day said act of 1905 took effect, and obtaining the restraining order herein, before said Board of Railroad Commissioners could, by any possibility, have taken any action in the direction of establishing freight rate schedules for intra-state traffic, which, considered as a whole, would produce a reasonable compensation to the complainant for its service, has prevented said Board from making any such effort.

4. That said bill of complaint is deficient for want of certainty in its averments, in this, that it fails to show the amount of the complainant's gross annual income from the operation of its lines of railroad in the State of Missouri in transporting intra-state traffic, or the amount of its operating and maintenance expenses in said State, in connection therewith, for any year prior to the pasasge and approval of said Act of 1905; and in this, that said bill of complaint fails to show to what extent or in what amount if any, the total gross receipts of the complainant from local or intra-state traffic in Missouri, will be reduced.

5. That this defendant is not a proper party defendant
41 to the bill of complaint.

Wherefore, and for divers other good causes of demurrer appearing on said bill, this defendant demurs thereto, and he prays the judgment of this Honorable Court whether he shall be compelled to make further or any answer, to the said bill; and he humbly prays to be hence dismissed with his reasonable costs in his behalf sustained.

HERBERT S. HADLEY,
Attorney General;
JOHN KENNISH,
SANFORD B. LADD,
Solicitors for Defendants.

SANFORD B. LADD,
Of Counsel.

I hereby certify that the foregoing demurrer is, in my opinion, well founded in point of law.

SANFORD B. LADD,
Of Counsel for Defendant.

42 Afterwards, to-wit, on the 7th day of August, 1905, the demurrer of Joseph Sanderson to Bill of Complaint was filed. Said demurrer is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 3000.

THE WABASH RAILROAD COMPANY, Complainant,

vs.

JOHN A. KNOTT, JOSEPH P. RICE and FRANK A. WIGHTMAN, Railroad Commissioners of the State of Missouri; Herbert S. Hadley, Attorney General of the State of Missouri, and Joseph Sanderson, J. S. Peppard, and Sidney Smith, Defendants.

The Demurrer of Joseph Sanderson, One of the Above Named Defendants, to the Bill of Complaint of The Wabash Railroad Company, the Above Named Complainant.

This defendant, by protestation, not confessing or acknowledging all or any of the matters or things in the said bill of complaint contained, to be true, in such manner and form as the same are therein and thereby set forth and alleged, demurs to the said bill, and for causes of demurrer, shows:

1. That it appears by the complainant's own showing by the said bill, that it is not entitled to the relief prayed by said bill, or any relief whatever, against this defendant.

2. That said bill of complaint of the complainant is wholly without equity.

3. That this defendant is not a proper party defendant to the bill of complaint.

43 Wherefore, and for divers other good causes of demurrer appearing on said bill, this defendant demurs thereto, and he prays the judgment of this honorable Court whether he shall be compelled to make further or any answer to the said bill, and he humbly prays to be hence dismissed with his reasonable costs in his behalf sustained.

HERBERT S. HADLEY,
Attorney General;
JOHN KENNISH,
SANFORD B. LADD,
Solicitors for Defendant.

SANFORD B. LADD,
Of Counsel.

I hereby certify that the foregoing demurrer is, in my opinion well founded in point of law.

SANFORD B. LADD,
Of Counsel for Defendant.

44 Afterwards, to-wit, on the 7th day of August, 1905, the demurrer of Sidney Smith to Bill of Complaint was filed. Said demurrer is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 3000.

THE WABASH RAILROAD COMPANY, Complainant,
vs.
JOHN A. KNOTT, JOSEPH P. RICE and FRANK A. WIGHTMAN, Railroad Commissioners of the State of Missouri; Herbert S. Hadley, Attorney General of the State of Missouri, and Joseph Sanderson, J. S. Peppard, and Sidney Smith, Defendants.

The Demurrer of Sidney Smith, One of the Above-named Defendants, to the Bill of Complaint of the Wabash Railroad Company, the Above-named Complainant.

This defendant, by protestation, not confessing or acknowledging all or any of the matters or things in the said bill of complaint contained, to be true, in such manner and form as the same are therein and thereby set forth and alleged, demurs to the said bill, and for cause of demurrer, shows:

1. That it appears by the complainant's own showing by the said bill, that it is not entitled to the relief prayed by said bill, or any relief whatever, against this defendant.

2. That said bill of complaint of the complainant is wholly without equity.

3. That this defendant is not a proper party defendant to the bill of complaint.

45 Wherefore, and for divers other good causes of demurrer appearing on said bill, this defendant demurs thereto, and he prays the judgment of this honorable Court whether he shall be compelled to make further or any answer to the said bill, and he humbly prays to be hence dismissed with his reasonable costs in his behalf sustained.

HERBERT S. HADLEY,
Attorney General;
JOHN KENNISH,
SANFORD B. LADD,
Solicitors for Defendant.

SANFORD B. LADD,
Of Counsel.

I hereby certify that the foregoing demurrer is, in my opinion well founded in point of law.

SANFORD B. LADD,
Of Counsel for Defendant.

46 Afterwards, to-wit, on the 7th day of August, 1905, the demurrer of J. G. Peppard to Bill of Complaint was filed. Said demurrer is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 3000.

THE WABASH RAILROAD COMPANY, Complainant,

vs.

JOHN A. KNOTT, JOSEPH P. RICE, and FRANK A. WIGHTMAN, Railroad Commissioners of the State of Missouri; Herbert S. Hadley, Attorney General of the State of Missouri; and Joseph Sanderson, J. S. Peppard, and Sidney Smith, Defendants.

The Demurrer of J. G. Peppard, One of the Above-named Defendants, to the Bill of Complaint of the Wabash Railroad Company, the Above Named Complainant.

This defendant, by protestation, not confessing or acknowledging all or any of the matters or things in the said bill of complaint contained, to be true, in such manner and form as the same are therein and thereby set forth and alleged, demurs to the said bill, and for causes of demurrer, shows:

1. That it appears by the complainant's own showing by the said bill, that it is not entitled to the relief prayed by said bill, or any relief whatever, against this defendant.

2. That said bill of complaint of the complainant is wholly without equity.

47 3. That this defendant is not a proper party defendant to the bill of complaint.

Wherefore, and for divers other good causes of demurrer appearing on said bill, this defendant demurs thereto, and he prays the judgment of this honorable Court whether he shall be compelled to make further or any answer to the said bill; and he humbly prays to be hence dismissed with his reasonable costs in his behalf sustained.

HERBERT S. HADLEY,
Attorney General;
JOHN KENNISH,
SANFORD B. LADD,
Solicitors for Defendant.

SANFORD B. LADD,
Of Counsel.

I hereby certify that the foregoing demurrer is, in my opinion, well founded in point of law.

SANFORD B. LADD,
Of Counsel for Defendant.

48 Afterwards, to-wit, on the 14th day of October, 1905, a waiver of affidavits to demurrers was filed. Said waiver of affidavits is in words and figures as follows, to-wit:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. —.

THE WABASH RAILROAD COMPANY, Complainant,
vs.
JOHN A. KNOTT et al., Defendants.

The affidavits of the defendants to the several demurrers this day filed herein to the Bill of Complaint, are hereby waived.

FRANK HAGERMAN,
Solicitors for Complainant.

Kansas City, Mo., August 7, 1905.

49 Afterwards, to-wit, on the 14th day of October, 1905, the following order was filed and entered of record:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 3000.

THE WABASH RAILROAD COMPANY, Complainant,
vs.
JOHN A. KNOTT et al., Defendants.

Order.

This cause coming on for hearing this October 14, 1905, upon each and all of the demurrers heretofore filed by defendants herein, the complainant appeared by Frank Hagerman, its solicitor, and said demurring defendants by Sanford B. Ladd, their solicitor, and the court being fully advised in the premises overrules each and all of the said demurrers, and at the request of the said solicitor of said defendants they are given until the November, 1905, Rules in which to file answers.

(Signed) SMITH McPHERSON, *Judge.*

50 Afterwards, to-wit, on the 28th day of November, A. D. 1905, the joint answer of John A. Knott et al. was filed. Said answer is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 3000.

THE WABASH RAILROAD COMPANY, Complainant,
vs.
JOHN A. KNOTT, JOSEPH P. RICE, and FRANK A. WIGHTMAN, Railroad Commissioners of the State of Missouri; Herbert S. Hadley, Attorney General of the State of Missouri; and Joseph Sanderson, J. S. Peppard, and Sidney Smith, Defendants.

The Joint and Several Answer of John A. Knott, Joseph P. Rice, and Frank A. Wightman, Three of the Defendants, to the Bill of Complaint of the Wabash Railroad Company, Complainant.

These defendants respectively now and at all times hereafter saving to themselves all and all manner of benefit of exception or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in the said bill contained, for answer thereto, or to so much thereof as these defendants are advised it is material or necessary for them to make answer to, answering, say:

I.

They admit the averments of paragraph numbered I of complainant's bill of complaint, except in the following particulars. They say that they have no knowledge, information or belief as to whether the lines owned and operated by the complainant are of the length, respectively, stated, or aggregate a total mileage of 654 miles, as therein stated.

51

II.

These defendants admit that this cause arises under the Constitution and Laws of the United States; but they deny that said Act of 1905 is unconstitutional or violative of the provisions of the Constitution of the United States or of the Fourteenth amendment thereto, or contrary to the laws of the United States. They admit that the matter and amount in dispute exceeds, exclusive of interest and costs, the sum or value of Two Thousand Dollars ($2,000).

III.

They admit that they constitute the Board of Railroad Commissioners of the State of Missouri, and that the defendant, Herbert S. Hadley, is the Attorney General of the State of Missouri, but they deny that either they or the said defendant, Hadley, are required by law to do or perform the special duties mentioned in said bill of complaint, except as in this answer hereinafter admitted.

IV.

They admit that the other defendants are citizens and residents respectively of the State of Missouri, and of the counties of said State mentioned in paragraph IV of said bill of complaint; but whether each or any of them are engaged in shipping over the complainant's road or other roads in the State of Missouri, any of the commodities mentioned in the Act of 1905, or whether they represent any class of shippers, these defendants have no knowledge,
52 information or belief.

V.

They admit that paragraph V of the complainant's bill of complaint, correctly sets out Sections 1191, 1192 and 1193 of the Revised Statutes of Missouri, of 1899, and that Section 1194 of said Revised Statutes fixed the maximum rates for the classes of freight designated in said Section 1193, as Classes D, E, F, G, H, I and J, respectively. They admit that the statutes of the state provide for the election and qualification of Railroad Commissioners, and prescribe their special duties, and as to the allegations in paragraph V of said bill of complaint, regarding the special duties imposed upon them, and upon prosecuting attorneys and the Attorney General, by the statutes of the State, they aver that Articles II and IV of Chapter 12 of the Revised Statutes of Missouri of 1899, and an Act of the General Assembly of the State of Missouri, entitled, "An Act to amend Chapter 12 of the Revised Statutes of the State of Missouri of 1899, entitled 'Corporations, private,' by adding two new sections after Section 1194, to be known as Sections 1194*a* and 1194*b*, providing that the board of railroad and warehouse commissioners shall fix, maintain, establish, reduce and modify freight rates upon all railroads in this State, and providing for the manner of so doing and enforcing the same," approved April 6, 1903, published in the "Laws of Missouri, passed at the Session of the Forty-second General Assembly," at page 132, of which said Statutes and Act, this Court will take judicial notice, prescribe particularly all the duties imposed by law upon these defendants, constituting the Board of Railroad Commissioners, and prosecuting attorneys and the attorney general, respecting freight rates and the enforcement of any laws of this State governing or affecting the same; and they beg leave to refer to said statutes and said Act, and that the same may be considered in connection with this answer,
53 with like effect as if they had been fully set out herein.

VI.

These defendants admit the passage by the legislature of the State of Missouri, of the Act approved April 6, 1903, and that said Act is correctly set out in paragraph VI of said bill of complaint.

VII.

These defendants admit the passage by the legislature of the State of Missouri, of the Act approved April 15, 1905, and that said Act

is correctly set out in paragraph VII of said bill of complaint. They admit that said last named Act took effect on the 16th day of June, 1905; that the rates at the time of the filing of said bill of complaint being charged by the complainant for the transportation of freight of the character mentioned in said last named Act, were shown in schedules on file with the Railroad Commissioners; but these defendants deny that said rates so charged by complainant were, as respects all the freight of the character mentioned in said Act, in excess of the maximum rates fixed by said Act of 1905. They admit that as to some of the commodities mentioned in said Act, the same would require some reduction in the rates charged by the complainant for the transportation thereof at the time of the filing of said bill of complaint, and that such reduction would make necessary a change in the schedules so filed by the complainant with the Railroad Commissioners; but these defendants deny that such change could not and cannot be made by the complainant without jeopardizing
54 its property interests. These defendants deny that they had at or before the filing of said bill of complaint, threatened to enforce the provisions of said Act of 1905 by entering upon investigations, either upon the instigation of the Board of Railroad Commissioners or on the complaint of shippers or by determining or adjudging the complainant's then existing schedule of rates to be unreasonable, unjust or extortionate, or by requiring the complainant, under pain of any penalties, to file or publish a new schedule fixing rates not in excess of those mentioned in said Act of 1905; and they deny that they proposed to do any of said things. They deny that they proposed to file, post or publish as the complainant's schedule, the maximum rates fixed in said Act of 1905, if the complainant should refuse to do so, or to direct any prosecuting attorney to prosecute or recover of complainant any penalties, or to direct the Attorney General to assist in any such prosecution or recover any penalties for the complainant's failure to comply with the orders which they proposed from time to time to make in investigations instituted for the enforcement of said Act of 1905. They deny that at that time they proposed to make any such investigations. On the contrary, these defendants aver that when this suit was begun the time had not arrived at which these defendants could take any action whatever under or in pursuance of said Act of 1905, and that they were not at that time proposing, because the time had not *been* then arrived, when they, as such Board of Railroad Commissioners, could properly or lawfully propose any action in the premises. They had not, as a Board, determined or considered the course proper to be pursued by them in respect of the matter when said Act of 1905 should have taken effect. They deny that any prosecuting attorney or the
55 Attorney General would have conducted such prosecutions or sought to recover any such penalties.

As to whether shippers along the line of the complainant's railroad were then and are now numerous, or engaged daily or at all in making or receiving shipments to or from points in the State of Missouri of any freight of the special classes designated in said Act of 1905, these defendants have no knowledge, information or belief.

They deny that by any such shippers or shipper there would have been or will be instituted suits to recover of the complainant any damages or attorneys' fees for charging rates higher than those fixed by said Act of 1905.

Whether any other shippers in the counties in the State where the complainant's line of road extends are interested with those named as defendants herein, these defendants have no knowledge, information or belief; but they deny that any shipper or other person not named as a defendant in this action can or will be bound by any decree which may be entered herein.

VIII.

These defendants deny that said Act of 1905 is invalid or inoperative or of no force or effect for any of the reasons mentioned in paragraph VIII of the complainant's said bill of complaint. They deny that said Act fixes rates confiscatory in their nature or unreasonable in amount, or insufficient to permit the complainant to operate its property in Missouri, without loss, or makes it impossible for freight to be carried by the complainant between points in Missouri, at any profit. They deny that all or any part of said Act is contrary to or violative of the provisions of the
56 Constitution of the United States, or of the Fourteenth Amendment thereto. They deny that said Act is invalid, as alleged in paragraph XII or paragraph XIII of said bill of complaint, or that it is violative of said Fourteenth Amendment to the Constitution of the United States. They deny that the provision of said Act, that in computing the rate of freight, the distance shall be computed from the point where it is received to the point of destination in the State, notwithstanding it may pass from one road to another, impairs the complainant's freedom of contract or fixes a rate for it based upon carriage over the line of another road, or that thereby any provision of the federal constitution or of any amendment thereto is violated, or that the freedom of contract guaranteed by Section 4 of Article 2 of the State Constitution is denied. They deny that said Section 1194*a* is a discrimination between individuals and companies, or denies to the complainant the equal protection of the law guaranteed to it by the Fourteenth Amendment to the Constitution of the United States.

These defendants further aver that even if said Section 1194*a* did operate to discriminate against the complainant, it might be stricken out and Section 1194 would remain a valid and complete enactment, capable of enforcement. They aver that the effect of said Section 1194*a* is not to discriminate against the complainant, and that at the time of the taking effect of said Act of 1905, there was not and is not now any railroad or part of railroad in the State of Missouri, which is not owned and operated by a railroad company. They deny that said law as it now stands is uncertain, as averred in subdivision (*e*) of paragraph VIII of the complainant's bill of complaint, for the reason stated therein, or for any other reason, or that said Act of 1905 is invalid because of any reason stated in said subdivision (*e*).

57 IX.

These defendants have no knowledge, information or belief as to the complainant's total track mileage, or whether it is operated or managed as one railroad system; or whether such system embraces side, industrial or branch tracks or terminals or terminal facilities not included in the mileage stated in paragraph IX of complainant's bill of complaint; or whether they are necessary to the operation of complainant's system; or whether in acquiring, constructing or equipping said properties, there was necessarily or fairly expended the amounts stated in said paragraph IX as the bonded indebtedness and capital stock of the complainant. These defendants have no knowledge, information or belief as to the amount of the bonded indebtedness of the complainant or as to its debenture bonds of any series, or whether they are secured by a mortgage upon the complainant's lines of railroad and other properties, or what rate of interest they bear.

These defendants have no knowledge, information or belief as to whether any of said properties were constructed or acquired at a fair or reasonable cost, or whether the complainant's lines of railroad were judiciously located, or have been properly or economically managed or operated, or whether complainant's lines in Missouri secure any benefit from the remainder of its system or the value of its property in Missouri, or its earnings, or capacity to serve the public, are increased in any degree thereby. They have no knowledge, information or belief as to whether its net earnings upon business in the State of Missouri have or have not been greater or less than such earnings in any other State.

They deny that the complainant's gross earnings are or ever have been insufficient or inadequate to pay its reasonable, fixed charges, operating expenses and cost of maintenance and betterments, equipment and other facilities necessary to meet the needs of the
58 public and the requirements of the law. They have no knowledge, information or belief as to whether complainant's business has been larger in the past than for the present year, or whether it has been unable to pay, from its earnings or otherwise, interest on its debenture bonds of any series, or to pay any dividend or return upon any of its capital stock. They deny that the complainant has not been or is not now able to earn or obtain a fair return upon its properties or business as a common carrier, or upon the moneys fairly and in good faith invested therein, in the State of Missouri, under any rules or charges heretofore fixed, authorized or charged in said State.

X.

These defendants admit that the rates, at the time of the filing of said bill of complaint and now, charged by the complainant for State shipments on some of the classes of freight mentioned in said Act of 1905, were and are, in some cases, in excess of the maximums therein fixed, but they are informed and believe that as to some of the commodities mentioned in said Act, the rates so charged by the complainant were and are less than the maximum rates fixed

by said Act. They deny that if charges for the classes of freight mentioned in said Act of 1905 should be made by the complainant at the maximum rates fixed in said Act, the complainant would be required to do such business without profit or at any loss, or without return upon its investment in this State. They deny that the rates fixed in said Act are unjust or unreasonably low or confiscatory in their nature, or that they will not make a return upon the
59 investment in the property of complainant in this State, or that the gross receipts of all the State business which the complainant does, can or will do in Missouri, when charging the maximum rates fixed by the Act of 1905, for the classes of freight therein mentioned, will not be sufficient to pay the operating expenses and the cost of doing such business in the State, or that there will not be left any sum as profit or return upon the value of the property of the complainant devoted to the use of such business in this State.

They deny that the maximum rates for any class of freight mentioned in said Act of 1905, are not sufficient to pay the cost of the carriage thereof.

XI.

These defendants deny that the complainant's tariff of freight charges, which was in effect in the State of Missouri at the time of the passage and approval of said Act of 1905, did not or does not provide the complainant with a gross annual income derived from the operation of all its lines of railroad in the State of Missouri on intra-State traffic sufficient in the aggregate to pay its operating and maintenance expenses in the State of Missouri, in connection therewith, or that it did not furnish a sufficient sum for that purpose for any years or year or period prior to the passage and approval of said Act.

These defendants have no knowledge, information or belief as to whether the reduction in rates under said Act of 1905 will not increase the local traffic, or whether the volume of State and local business will not be more in 1905 than it was in 1904, or whether it will be less in the year 1905 than for any previous years, or whether the expense of doing such business will be as great
60 or whether in the future there will be any increase whatever in said expenses.

These defendants deny that if for the classes of freight mentioned in said Act of 1905, the complainant should charge the maximum rates therein fixed, its total gross receipts from local or state traffic in Missouri, would be in any degree reduced. They have no knowledge, information or belief as to whether the expenses of the complainant will not be lessened. They deny that any reduction provided for by said Act of 1905 is either unfair or unjust, or that it prevents a fair return upon the investment in complainant's property or that the enforcement of said Act will compel the complainant to do its local and State business without a fair or reasonable profit thereon.

XII.

These defendants admit that the companies mentioned in paragraph XII of the complainant's bill of complaint carry the classes of freight mentioned in said Act, and that they claim that the maximum rates thereby fixed are confiscatory in their nature, and if charged would result in their doing their State business without any profit. But these defendants deny that such claim is in point of fact true.

These defendants deny that the maximum rates fixed by said Act of 1905 are unreasonably low as against any of said companies or that they will not permit any of them to make a profit upon their State business, or that for that reason said Act is invalid as against said companies.

They deny that said Act if held valid as to complainant, is unconstitutional because of any alleged discrimination between the complainant and any other persons or corporations operating
61 railroads in this State. They aver that the only discrimination of which the complainant will be allowed to complain, is a discrimination against itself in favor of some other person or corporation; and they deny that any of the provisions of the Constitution of the United States or of any of the amendments thereto are in any respect violated by said Act.

XIII.

Further answering, and with special reference to the averments of paragraph XIII of the complainant's bill of complaint, these defendants deny that said Act of 1905 fixes and establishes maximum rates which are unjust, unreasonable or unconstitutional for any reason.

These defendants have no knowledge, information or belief as to whether the cost of transporting live stock is greater than that of any of the other commodities mentioned in said Act, or whether the same reduces the rate on said live stock on an average of 33 per cent or whether the reduction in rates on salt, and cement is only 18 per cent, or in the case of lumber, lath and shingles, 9 per cent. They have no knowledge, information or belief as to whether the different articles transported on complainant's railway have been arranged in classes according to cost of carriage, price, risk of injury, bulk, volume of traffic, or any other circumstances or have remained in substantially the same classes for any period of time, or whether the same has been recognized approved or enacted into law by any statutory classification in effect in Missouri.
62 They deny that any reduction in rates upon articles affected by the said Act of 1905 is unequal or partial or arbitrary as compared with any other commodities or as between the commodities included in said Act. Or that the same works any injustice between shippers, purchasers or manufacturers of the State of Missouri, or deprives them of their property without due process of law or deprives them of the equal protection of the laws, or operates to deprive the complainant of its property without due process of law or deprives the complainant of the equal protection of the laws by any of the

methods or for any of the reasons mentioned in said paragraph XIII of the bill of complaint. They deny that the legislature had or has established maximum rates or charges for the transportation of all kinds of property or that even if the legislature had done so, any change effected in such rates by said Act of 1905, is presumably unfair or unreasonable in any respect. They deny that the legislature requires the complainant to discriminate in favor of any persons or shippers, or to give them a right of transportation for a less rate than the general rate heretofore fixed by any law; or that such rate is less than is just and reasonable in view of the cost to the carrier and the value of the service rendered to the shipper.

XIV.

These defendants, further answering, say that they are informed and believe that this complainant and seventeen other railroad companies or corporations, owning and operating lines of railroad in the State of Missouri, immediately after the approval of said Act of 1905, agreed and came to an understanding with each other, that none of them would comply with the provisions thereof, or transport
63 the commodities named in said Act at the rates mentioned therein, or make any effort to revise their schedules of rates for transporting the commodities mentioned in said Act and other commodities transported by them, in such a manner as to yield obedience to said Act and at the same time derive a reasonable profit upon the fair valuation of their property necessary to carry on their intra-State business, but determined, on concerted action among themselves, to disobey said Act, and to deny its validity and any obligation on their part to comply with it, and to bring suits, each of them for itself, on the day said Act should take effect, to enjoin the officers of the State from taking any action or discharging any duties which might be imposed upon them by law in respect of said Act, and for the further purpose of obtaining a decree of this court adjudging said Act to be null and void upon the grounds stated in this complainant's bill of complaint.

These defendants further aver that in pursuance of said agreement and understanding, this complainant and the said seventeen other companies or corporations did, on the 16th day of June, 1905, each for itself, file in this court its bill of complaint, all of them being upon substantially the same grounds as those stated in this complainant's bill of complaint, and praying for substantially the same relief, and did, on the same day, in each of said suits obtain from this court a restraining order, directed to and which was served upon, these defendants and the Attorney General of the State of Missouri, and certain persons designated in said bills of complaint as shippers, enjoining these defendants and the Attorney General from performing any of the duties imposed upon them as State officials, by law, looking to the enforcement of the provisions of said Act, (for the express terms of which said order these defendants pray leave to refer to the same as it appears in the

record of this cause), and afterwards, while said restraining
64 order was in force, did obtain from this court a preliminary injunction in the terms of said order, which said preliminary injunction is still operative.

These defendants say that they are informed and believe that the rates fixed by said Act of 1905, do not affect all the articles of freight transported by the complainant in its intra-State traffic, but that a very large number of articles, and a very large part of its intra-State traffic remain wholly unaffected and unregulated as to rates, by said Act or by any other existing statute. And these defendants say that the question of whether rates are compensatory or otherwise, can only be determined upon a consideration of a schedule of rates which shall embrace every article and all the freight transported by the complainant in carrying on its intra-State business.

These defendants are informed and believe that the complainant, if it had chosen to do so, instead of attacking the reasonableness or fairness of the rates upon the few articles mentioned in the Act of 1905, might have revised its schedule or tariff of rates upon all the articles of freight transported by it in carrying on its intra-State traffic, including those mentioned in said Act of 1905, in such a manner that the rates for carrying the articles not mentioned in said Act, would have been not unreasonable or unjust, either to itself or to the public, and that the income derived by the complainant for performing the service of transporting freight at the rates and charges fixed in such a schedule, would have been sufficient to assure to the complainant a fair and reasonable return upon the fair value of its property necessarily employed in the carrying on of such intra-State business.

65 These defendants further aver that the complainant afforded to these defendants, as a Board of Railroad Commissioners, no opportunity, after said Act of 1905 took effect, to revise, adjust and fix a schedule of rates upon all the articles of freight transported by the complainant in its intra-State traffic, including those mentioned in said Act of 1905, in such manner that the provisions of said Act of 1905 would be observed, and at the same time the rates upon all other articles not mentioned in said Act, should be not unreasonable or unjust, either to the complainant or to the public.

These defendants further say that if the complainant had failed to so revise or to attempt to so revise its schedules, these defendants, as such Board, would, if they had been given the opportunity, which was denied to them by the injunction in this cause, in the discharge of the duties imposed on them by law, have attempted to fix and establish such a schedule of rates upon all the articles of freight transported by the complainant in its intra-State traffic, as would have observed or complied with the provisions of said Act of 1905, and in other respects have been not unjust or unfair either to the complainant or to the public, and they believe that they could have done so.

These defendants further say that by the issue of the restraining order and the preliminary injunction in this cause,

they have been prevented from fixing any such schedule or attempting to fix a schedule of rates which should be just to the complainant and to shippers; that the complainant, by the filing of its bill before these defendants, as such Board, could lawfully act in the premises, has unwarrantably assumed that these defendants, as such Board, would fix and establish a schedule of rates which would be unjust to the complainant.

66 These defendants say that in view of the statutes of this State, which define the duties to be discharged by them, as such Board, this action ought not to be maintained, because it was brought before these defendants had any opportunity to discharge any of such duties or act in the matter of a general revision of the schedule of rates, made necessary by said Act of 1905.

These defendants deny that the complainant is entitled to any relief whatever against these defendants, without this, that any other matter, cause or thing in the complainant's said bill of complaint, or amendments thereto, contained, material or necessary for these defendants to make answer unto, and not herein or hereby well and sufficiently answered, confessed, traversed and avoided or denied, is true to the knowledge or belief of these defendants; all which matters and things these defendants are ready and willing to aver, maintain and prove, as this honorable court shall direct, and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

HERBERT S. HADLEY,
Attorney General;
JOHN KENNISH,
Assistant Attorney General,
Solicitors for Defendants.

SANFORD B. LADD,
Of Counsel.

67 Afterwards, towit, on the 1st day of December, A. D. 1905, the answer of Herbert S. Hadley, Attorney General, was filed.

Said answer is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 3000.

THE WABASH RAILROAD COMPANY, Complainant,
vs.
JOHN A. KNOTT, JOSEPH P. RICE, and FRANK A. WIGHTMAN, Railroad Commissioners of the State of Missouri; Herbert S. Hadley, Attorney General of the State of Missouri, and Joseph Sanderson, J. S. Peppard, and Sidney Smith, Defendants.

The Answer of Herbert S. Hadley, Attorney General of the State of Missouri, One of the Defendants, to the Bill of Complaint of the Wabash Railroad Company, Complainant.

This defendant now and at all times hereafter saving to himself all and all manner of benefit of exception or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in the said bill contained, for answer thereto, or to so much thereof as this defendant is advised it is material or necessary for him to make answer to, answering, says:

I.

He admits the averments of paragraph numbered I of complainant's bill of complaint, except in the following particular: He says that he has no knowledge, information or belief as to whether the lines owned and operated by the complainant are of the length, respectively, stated, or aggregate a total mileage of 654 miles, as therein stated.

68 II.

This defendant admits that this cause arises under the Constitution and laws of the United States; but he denies that said Act of 1905 is unconstitutional or violative of the provisions of the Constitution of the United States or of the Fourteenth Amendment thereto, or contrary to the laws of the United States. He admits that the matter and amount in dispute exceeds, exclusive of interest and costs, the sum or value of Two Thousand Dollars ($2,000).

III.

He admits that the defendants, John A. Knott, Joseph P. Rice and Frank A. Wightman, constitute the Board of Railroad Commissioners of the State of Missouri, and that this defendant is the Attorney General of the State of Missouri, but he denies that either they or this defendant, are required by law to do or perform the special duties mentioned in said bill of complaint, except as in this answer hereinafter admitted.

IV.

He admits that the other defendants are citizens and residents respectively, of the State of Missouri, and of the counties of said State mentioned in paragraph IV of said bill of complaint; but whether each or any of them are engaged in shipping over the complainant's road or other roads in the State of Missouri any of the commodities mentioned in the Act of 1905, or whether they represent any class of shippers, this defendant has no knowledge, information or belief.

69 V.

He admits that paragraph V of the complainant's bill of complaint, correctly sets out Sections 1191, 1192 and 1193 of the Revised Statutes of Missouri of 1899, and that Section 1194 of said Revised Statutes fixed the maximum rates for the classes of freight designated in said Section 1193 as Classes D, E, F, G, H, I, and J, respectively. He admits that the statutes of the State provide for the election and qualification of Railroad Commissioners, and prescribe their special duties, and as to the allegations in paragraph V of said bill of complaint, regarding the special duties imposed upon them and upon the prosecuting attorneys and the Attorney General by the statutes of the State, he avers that Articles II and IV of Chapter 12 of the Revised Statutes of Missouri of 1899, and an act of the General Assembly of the State of Missouri, entitled "An act to amend Chapter 12 of the Revised Statutes of the State of Missouri, of 1899, entitled 'Corporations, private,' by adding two new sections after Section 1194, to be known as Sections 1194*a* and 1194*b*, providing that the board of railroad and warehouse commissioners shall fix, maintain, establish, reduce and modify freight rates upon all railroads in this State, and providing for the manner of so doing and enforcing the same," approved April 6, 1903, published in the "Laws of Missouri, passed at the Session of the Forty-second General Assembly" at page 132, of which said statutes and Act, this Court will take judicial notice, prescribe particularly all the duties imposed by law upon those defendants, constituting the board of Railroad Commissioners, and upon prosecuting attorneys and the Attorney General, respecting freight rates and the enforcement of any laws of this state governing or affecting the same: and he prays leave to refer to said Statutes and
70 said Act, and that the same may be considered in connection with this answer with like effect as if they had been fully set out herein.

VI.

This defendant admits the passage by the Legislature of the State of Missouri, of the Act approved April 6, 1903, and that said Act is correctly set out in paragraph VI of said bill of complaint.

VII.

This defendant admits the passage by the Legislature of the State of Missouri, of the Act approved April 15, 1905, and that said Act

is correctly set out in paragraph VII of said bill of complaint. He admits that said last named Act took effect on the 16th day of June, 1905; that the rates at the time of the filing of said bill of complaint being charged by the complainant for the transportation of freight of the character mentioned in said last named Act, were shown in the schedules on file with the Railroad Commissioners; but this defendant denies that said rates so charged by complainant were, as respects all the freight of the character mentioned in said Act, in excess of the maximum rates fixed by said Act of 1905. He admits that as to some of the commodities mentioned in said Act, the same would require some reduction in the rates charged by the complainant for the transportation thereof at the time of the filing of said bill of complaint, and that such reduction would make necessary a change in the schedules so filed by the complainant with the Railroad Commissioners; but this defendant denies that such change could not and cannot be made by the complainant without jeopardizing its property in-
71 terests. This defendant denies that said Railroad Commissioners had, at or before the filing of said bill of complaint, threatened to enforce the provisions of said Act of 1905, by entering upon investigations, either upon the instigation of the Board of Railroad Commissioners or on the complaint of shippers or by determining or adjudging complainant's then existing schedule of rates to be unreasonable, unjust or extortionate, or by requiring the complainant, under pain of any penalties, to file or publish a new schedule fixing rates not in excess of those mentioned in said Act of 1905; and he denies that they proposed to do any of said things. He denies that they proposed to file, post or publish as the complainant's schedule, the maximum rates fixed in said Act of 1905, if the complainant should refuse to do so, or to direct any prosecuting attorney to prosecute or recover of complainant any penalties, or to direct the Attorney General to assist in any such prosecution, or recover any penalties for the complainant's failure to comply with the orders which they proposed from time to time to make in investigations instituted for the enforcement of said Act of 1905. He denies that at that time they proposed to make any such investigations. On the contrary, this defendant avers that when this suit was begun the time had not arrived at which the Railroad Commissioners could take any action whatever under or in pursuance of said Act of 1905, and that they were not at that time proposing, because the time had not then arrived when they, as such Board of Railroad Commissioners, could properly or lawfully propose any action in the premises.

They had not, as a Board, determined or considered the course proper to be pursued by them in respect of the matter when said Act of 1905 should have taken effect. He denies that any
72 prosecuting attorney or the Attorney General would have conducted such prosecutions or sought to recover any such penalties.

As to whether shippers along the line of the complainant's railroad were then and are now numerous, or engaged daily, or at all, in

making or receiving shipments to or from points in the State of Missouri of any freight of the special classes designated in said Act of 1905, this defendant has no knowledge, information or belief. He denies that by any such shippers or shipper there would have been, or will be, instituted suits to recover of the complainant any damages or attorney's fees for charging rates higher than those fixed by said Act of 1905.

Whether any other shippers in the counties in the state where the complainant's line of road extends, are interested with those named as defendants herein, this defendant has no knowledge or belief; but he denies that any shipper or other person not named as a defendant in this action can or will be bound by any decree which may be entered herein.

VIII.

This defendant denies that said Act of 1905 is invalid or inoperative or of no force or effect for any of the reasons mentioned in paragraph VIII of the complainant's said bill of complaint. He denies that said Act fixes rates confiscatory in their nature, or unreasonable in amount, or insufficient to permit the complainant to operate its property in Missouri, without loss, or makes it impossible for freight to be carried by the complainant between points in Missouri, at any profit.

73 He denies that all or any part of said Act is contrary to or violative of the provisions of the Constitution of the United States, or of the Fourteenth Amendment thereto.

He denies that said Act is invalid, as alleged in paragraph XII or paragraph XIII of said bill of complaint, or that it is violative of said Fourteenth Amendment to the Constitution of the United States. He denies that the provision of said Act, that in computing the rate of freight, the distance shall be computed from the point where it is received to the point of destination in the State, notwithstanding it may pass from one road to another, impairs the complainant's freedom of contract or fixes a rate for it based upon carriage over the line of another road, or that thereby any provision of the federal constitution or of any amendment thereto, is violated, or that the freedom of contract guaranteed by Section 4 of Article 2 of the State constitution is denied. He denies that said Section 1194*a* is a discrimination between individuals and companies, or denies to the complainant the equal protection of the law guaranteed to it by the Fourteenth Amendment to the Constitution of the United States.

This defendant further avers that even if said Section 1194*a* did operate to discriminate against the complainant, it might be stricken out and Section 1194 would remain a valid and complete enactment, capable of enforcement.

He avers that the effect of said Section 1194*a* is not to be discriminated against the complainant, and that at the time of the taking effect of said Act of 1905, there was not and is not now any railroad or part of railroad in the State of Missouri, which is not owned and operated by a railroad company.

He denies that said law as it now stands is uncertain, as averred in subdivision (*e*) of paragraph VIII of the complainant's bill of complaint, for the reason stated therein, or for any other reason, or that said Act of 1905 is invalid because of any reason stated in said subdivision (*e*).

74 IX.

This defendant has no knowledge, information or belief as to the complainant's total track mileage or whether it is operated or managed as one railroad system; or whether such system embraces side, industrial or branch tracks or terminals, or terminal facilities not included in the mileage stated in paragraph IX of complainant's bill of complaint: or whether they are necessary to the operation of complainant's system: or whether in acquiring, constructing or equipping said property, there was necessarily or fairly expended the amounts stated in said paragraph IX as the bonded indebtedness and capital stock of the complainant. This defendant has no knowledge, information or belief as to the amount of the bonded indebtedness of the complainant or as to its debenture bonds of any series, or whether they are secured by a mortgage upon the complainant's lines of railroads and other properties, or what rate of interest they bear.

This defendant has no knowledge, information or belief as to whether any of said properties were constructed or acquired at a fair or reasonable cost, or whether the complainant's lines of railroad were judiciously located, or have been properly or economically managed or operated, or whether complainant's lines in Missouri secure any benefit from the remainder of its system or the value of its property in Missouri, or its earnings, or capacity to serve the public are increased in any degree thereby. He has no knowledge information or belief as to whether its net earnings upon business in the State of Missouri, have or have not been greater or less than such earnings in any other State.

75 He denies that the complainant's gross earnings are or ever have been insufficient or inadequate to pay its reasonable, fixed charges, operating expenses, cost of maintenance and betterments, equipment and other facilities necessary to meet the needs of the public and the requirements of the law. He has no knowledge, information or belief as to whether complainant's business has been larger in the past than for the present year, or whether it has been unable to pay, from its earnings or otherwise, interest on its debenture bonds of any series, or to pay any dividend or return upon any of its capital stock. He denies that the complainant has not been or is not now able to earn or obtain a fair return upon its properties or business as a common carrier, or upon the moneys fairly and in good faith invested therein, in the State of Missouri, under any rules or charges heretofore fixed, authorized or charged in said State.

X.

This defendant admits that the rates, at the time of the filing of said bill of complaint and now, charged by the complainant for

State shipments on some of the classes of freight mentioned in said Act of 1905, were and are, in some cases, in excess of the maximum therein fixed, but he is informed and believes, that as to some of the commodities mentioned in said Act, the rates so charged by the complainant were and are less than the maximum rates fixed by said Act. He denies that if the charges for the classes of freight mentioned in said Act of 1905 should be made by the complainant at the maximum rates fixed in said Act, the complainant would be required to do such business without profit or at any loss, or without return upon its investment in this State. He denies that the rates fixed in said Act are unjust or unreasonably low or confiscatory in their nature, or that they will not make a return upon the
76 investment in the property of complainant in this State, or that the gross receipts of all the State business which the complainant does, can or will do in Missouri, when charging the maximum rates fixed by the Act of 1905, for the classes of freight therein mentioned, will not be sufficient to pay the operating expenses and the cost of doing such business in the State, or that there will not be left any sum as profit or return upon the value of the property of the complainant devoted to the use of such business in this State.

He denies that the maximum rates for any class of freight mentioned in said Act of 1905, are not sufficient to pay the cost of the carriage thereof.

XI.

This defendant denies that the complainant's tariff of freight charges which was in effect in the State of Missouri at the time of the passage and approval of said Act of 1905 did not or does not provide the complainant with a gross annual income derived from the operation of all its lines of railroad in the State of Missouri on intra-State traffic sufficient in the aggregate to pay its operating and maintenance expenses in the State of Missouri, in connection therewith or that it did not furnish a sufficient fund for that purpose for any years or year or period prior to the passage and approval of said Act.

This defendant has no knowledge, information or belief as to whether the reduction in rates under said Act of 1905 will not increase the local traffic, or whether the volume of State and local business will not be more in 1905 than it was in 1904, or whether it will be less in the year 1905 than for any previous years or
77 whether the expense of doing such business will be as great or whether in the future there will be any increase whatever in said expenses.

This defendant denies that if for the classes of freight mentioned in said Act of 1905, the complainant should charge the maximum rates therein fixed, its total gross receipts from local or State traffic in Missouri, would be in any degree reduced. He has no knowledge, information or belief as to whether the expenses of the complainant will not be lessened. He denies that any reduction provided for by said Act of 1905 is either unfair or unjust, or that it prevents a

fair return upon the investment in complainant's property or that the enforcement of said Act will compel the complainant to do its local and State business without a fair or reasonable profit thereon.

XII.

This defendant admits that the companies mentioned in paragraph XII of the complainant's bill of complaint carry the classes of freight mentioned in said Act, and that they claim that the maximum rates thereby fixed are confiscatory in their nature, and if charged would result in their doing their State business without any profit. But this defendant denies that such claim is in point of fact true.

This defendant denies that the maximum rates fixed by said Act of 1905 are unreasonably low as against any of said companies or that they will not permit any of them to make a profit upon their State business, or that for that reason said Act is invalid as against said companies.

He denies that said Act, if held valid as to complainant, is unconstitutional because of any alleged discrimination between the complainant and any other person or corporation operating
78 railroads in this State. He avers that the only discrimination of which the complainant will be allowed to complain, is a discrimination against itself in favor of some other person or corporation: and he denies that any of the provisions of the Constitution of the United States or of any of the amendments thereto are in any respect violated by said Act.

XIII.

Further answering, and with special reference to the averments of paragraph XIII of the complainant's bill of complaint, this defendant denies that said Act of 1905 fixes and establishes maximum rates which are unjust, unreasonable or unconstitutional for any reason.

This defendant has no knowledge, information or belief as to whether the cost of transporting live stock is greater than that of any of the other commodities mentioned in said Act, or whether the same reduces the rate of said live stock on an average of 33 per cent or whether the reduction in rates on salt, and cement is only 18 per cent, or in the case of lumber, lath and shingles, 9 per cent. He has no knowledge, information or belief as to whether the different articles transported on complainant's railway have been arranged in classes according to cost of carriage, price, risk of injury, bulk, volume of traffic, or any other circumstances, or have remained in substantially the same classes for any period of time, or
79 whether the same has been recognized, approved or enacted into law by any statutory classification in effect in Missouri.

He denies that any reduction in rates upon articles affected by the said Act of 1905 is unequal or partial or arbitrary as compared with any other commodities, or as between the commodities included in said Act. Or that the same works any injustice between shippers,

purchasers or manufacturers of the State of Missouri, or deprives them of their property without due process of law, or deprives them of the equal protection of the laws, or operates to deprive the complainant of its property without due process of law, or deprives the complainant of the equal protection of the laws by any of the methods or for any of the reasons mentioned in said paragraph XIII of the bill of complaint. He denies that the Legislature had, or has, established maximum rates or charges for the transportation of all kinds of property, or that even if the Legislature had done so, any change effected in such rates by said Act of 1905 is presumably unfair or unreasonable in any respect. He denies that the Legislature requires the complainant to discriminate in favor of any persons or shippers, or to give them a right of transportation for a less rate than the general rate heretofore fixed by any law; or that such rate is less than is just and reasonable in view of the cost to the carrier and the value of the service rendered to the shipper.

XIV.

This defendant, further answering, avers that he is not a proper party defendant to the said bill of complaint, and that the same is wholly without equity as against this defendant.

80 XV.

This defendant, further answering, says that he is informed and believes that this complainant and seventeen other railroad companies or corporations, owning and operating lines of railroad in the State of Missouri, immediately after the approval of said Act of 1905 agreed and came to an understanding with each other, that none of them would comply with the provisions thereof, or transport the commodities named in said Act at the rates mentioned therein, or make any effort to revise their schedules of rates for transporting the commodities mentioned in said Act and other commodities transported by them, in such a manner as to yield obedience to said Act, and at the same time derive a reasonable profit upon the fair valuation of their property necessary to carry on their intrastate business, but determined, on concerted action among themselves, to disobey said Act, and to deny its validity and any obligation on their part to comply with it, and to bring suits, each of them for itself, on the day said Act should take effect, to enjoin the officers of the state from taking any action or discharging any duties which might be imposed upon them by law in respect of said Act, and for the further purpose of obtaining a decree of this court adjudging said Act to be null and void upon the grounds stated in this complainant's bill of complaint.

This defendant further avers that in purusuance of said agreement and understanding, this complainant and the said seventeen other companies or corporations did, on the 16th day of June, 1905, each for itself, file in this court its bill of complaint, all of them being upon substantially the same grounds as those stated in this complainant's bill of complaint, and praying for substantially the

same relief; and did on the same day, in each of said suits, obtain from this court a restraining order, directed to, and which was
81 served upon, the members of said Board of Railroad Commissioners, this defendant, and certain persons designated in said bills of complaint as shippers, enjoining this defendant and the said Board from performing any of the duties imposed upon them as state officials, by law, looking to the enforcement of the provisions of said Act, (for the express terms of which said order this defendant prays leave to refer to the same as it appears in the record of this cause), and afterwards, while said restraining order was in force, did obtain from this court a preliminary injunction in the terms of said order, which said preliminary injunction is still operative.

This defendant says that he is informed and believes that the rates fixed by said Act of 1905 do not affect all the articles of freight transported by the complainant in its intra-state traffic, but that a very large number of articles, and a very large part of its intra-state traffic, remain wholly unaffected and unregulated as to rates, by said Act or by any other existing statute. And this defendant says that the question of whether rates are compensatory or otherwise can only be determined upon a consideration of a schedule of rates which shall embrace every article and all the freight transported by the complainant in carrying on its intra-state business.

This defendant is informed and believes that the complainant, if it had chosen to do so, instead of attacking the reasonableness or fairness of the rates upon the few articles mentioned in the Act of 1905, might have revised its schedule of tariff of rates upon all the articles of freight transported by it in carrying on its intra-state traffic, including those mentioned in said Act of 1905, in such a manner that the rates for carrying the articles not mentioned in said Act, would have been not unreasonable or unjust, either to itself or to
82 the public, and that the income derived by the complainant for performing the service of transporting freight at the rates and charges fixed in such a schedule would have been sufficient to assure to the complainant a fair and reasonable return upon the fair value of its property necessarily employed in the carrying on of such intra-state business.

This defendant further avers that the Complainant afforded to said Board of Railroad Commissioners no opportunity, after said Act of 1905 took effect, to revise, adjust and fix a schedule of rates upon all the articles of freight transported by the complainant in its intra-state traffic, including those mentioned in said Act of 1905, in such a manner that the provisions of said Act of 1905 would be observed, and at the same time the rates upon all other articles not mentioned in said Act should be not unreasonable or unjust, either to the complainant or to the public.

This defendant is informed and believes that if the complainant had failed to so revise or to attempt to so revise its schedule, the defendants, members of such Board, would, if they had been given the opportunity, which was denied to them by the injunction in this cause, in the discharge of the duties imposed on them by law, have attempted to fix and establish such a schedule of rates upon all the

articles of freight transported by the complainant in its intra-state traffic, as would have observed or complied with the provisions of said Act of 1905, and in other respects have been not unjust or unfair either to the complainant or to the public, and he believes that they could have done so.

This defendant furthers says that by the issue of the restraining order and the preliminary injunction in this cause, the members of said Board have been prevented from fixing any such schedule or attempting to fix a schedule of rates which should be just
83 to the complainant and to shippers: that the complainant, by the filing of its bill before they, as such Board, could lawfully act in the premises, has unwarrantably assumed that they, as such Board, would fix and establish a schedule of rates which would be unjust to the complainant.

This defendant says that in view of the statutes of this state, which define the duties to be discharged by them, as such Board, this action ought not to be maintained, because it was brought before they had any opportunity to discharge any of such duties, or act in the matter of a general revision of the schedule of rates, made necessary by said Act of 1905.

This defendant denies that the complainant is entitled to any relief whatever against this defendant, without this, that any other matter, cause or thing in the complainant's said bill of complaint, or amendments thereto, contained material or necessary for this defendant to make answer unto, and not herein or hereby well and sufficiently answered, confessed, traversed and avoided or denied, is true to the knowledge or belief of this defendant; all which matters and things this defendant is ready and willing to aver, maintain and prove, as this Honorable Court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

HERBERT S. HADLEY,
Attorney General;
JOHN KENNISH,
Assistant Attorney General,
Solicitors for Defendants.

SANFORD B. LADD,
Of Counsel.

84 Afterwards, towit, on the 2nd day of December A. D. 1905, the joint and several answer of Joseph Sanderson et al. was filed. Said answer is in words and figures as follows:—

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

THE WABASH RAILROAD COMPANY, Complainant,

vs.

JOHN A. KNOTT, JOSEPH P. RICE and FRANK A. WIGHTMAN, Railroad Commissioners of the State of Missouri; Herbert S. Hadley, Attorney General of the State of Missouri, and Joseph Sanderson, J. S. Peppard, and Sidney Smith, Defendants.

The Joint and Several Answer of the Defendants, Joseph Sanderson, J. S. Peppard, and Sidney Smith, to the Bill of Complaint of The Wabash Railroad Company, Complainant.

These defendants, respectively, now and at all times hereafter, saving to themselves and each of them all and all manner of benefit of exception or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in the said bill contained, for answer thereto or to so much thereof as these defendants and each of them are advised it is material or necessary for them and each of them to make answer to, answering, say, each one of them for himself or itself;

I.

They admit the averments contained in paragraph I of said bill of complaint.

II.

As to whether said Act of 1905 is unconstitutional for any reason, these defendants have no knowledge, information or belief. All the other averments of paragraph II of said bill of complaint, these defendants admit.

85

III.

They admit each and every of the averments contained in paragraph III of said bill of complaint, except in this respect: Neither of these defendants has any knowledge, information or belief as to the duties which the Railroad Commissioners or the Attorney General are required by law to do or perform.

IV.

They admit the averments contained in paragraph IV of the bill of complaint, except in this particular: They have no knowledge, information or belief as to whether they or any one of them represents any class of shippers.

V.

They admit all the averments contained in paragraph V of the bill of complaint, with these exceptions, to-wit: They have no knowledge, information or belief as to what the statutes of the State pro-

vide in respect of the duties of the Railroad Commissioners, or of any prosecuting attorney or of the Attorney General.

VI.

They admit each and every of the averments of paragraph VI of the bill of complaint.

VII.

They admit that the legislature of the State of Missouri, at its session of 1905, passed the act called in said bill of complaint, the Act of 1905.

As to whether shippers along the line of complainant's railroad are numerous, or daily engaged in making or receiving shipments of freight of the special classes designated in the Act of 1905, these defendants have no knowledge, information or belief.

They deny that they were intending or proposing to insti-
86 tute against the complainant any suit whatever to recover of the complainant any damages or any attorney's fees.

They have no knowledge, information or belief as to whether any other shipper is interested with these defendants, or any of them, and they deny that they, or any one of them, should defend for any such person.

As to each and every other allegation contained in said paragraph VII of the bill of complaint, these defendants say that they have no knowledge, information or belief.

VIII.

As to the truth of the averments and of each of them contained in paragraph VIII of said bill of complaint, these defendants say that they have no knowledge, information or belief.

IX.

These defendants have no knowledge, information or belief as to the truth of the averments or any of them contained in paragraph IX of the bill of complaint.

X.

These defendants have no knowledge, information or belief as to the truth of the averments, or any of them, contained in paragraph X of the bill of complaint.

XI.

These defendants have no knowledge, information or belief as to the truth of the averments, or any of them, contained in paragraph XI of the bill of complaint.

XII.

These defendants have no knowledge, information or belief as to the truth of the averments, or any of them, contained in paragraph XII of the bill of complaint.

87 XIII.

These defendants have no knowledge, information or belief as to the truth of the averments, or any of them, contained in paragraph XIII of the bill of complaint.

XIV.

These defendants, further answering, say that none of them are proper parties defendant to the said bill of complaint and that each one of them has been improperly joined as a defendant herein; that there is no equity in said bill as against any one of them, and that in any event no costs ought to be adjudged herein against any of them.

These defendants deny that the complainant is entitled to any relief whatever against these defendants, or any of them without this, that any other matter, cause, or thing in the complainant's said bill of complaint or amendments thereto contained, material or necessary for these defendants to make answer unto, and not herein or hereby well and sufficiently answered, confessed, traversed and avoided or denied, is true to the knowledge or belief of these defendants; all which matters and things these defendants are ready and willing to aver, maintain and prove, as the honorable court shall direct, and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

HERBERT S. HADLEY,
Attorney General;
JOHN KENNISH,
Assistant Attorney General;
Solicitors for Defendants.

SANFORD B. LADD,
Of Counsel.

88 In order to avoid unnecessarily encumbering the record it is agreed, that admissions, denials and averments of want of knowledge, information and belief, contained in the foregoing answer, shall be taken and considered in every stage of this suit, with the same force and effect as if such admissions, denials or averments had mentioned specifically and in the language of the bill of complaint, the allegations thereof, which they are respectively intended to meet; that such admissions, denials and averments as to a number of allegations, as a whole, contained in the bill of complaint, shall have the same force and effect as if each of such allegations had been specifically referred to in the language of said bill of complaint.

WELLS H. BLODGETT,
C. W. TRAVOUS,
FRANK HAGERMAN,
Solicitor- for Complainant.
HERBERT S. HADLEY,
Attorney General;
JOHN KENNISH,
Assistant Attorney General,
Solicitors for Defendants.

SANFORD B. LADD,
Of Counsel.

89 Afterwards, towit, on the 17th day of February 1906, the replication to the answer of John A. Knott et al. was filed. Said replication is in words & figures as follows:—

In the United States Circuit Court for the Western Division of the Western District of Missouri.

In Equity. No. 3000.

THE WABASH RAILROAD COMPANY, Complainant,
vs.
JOHN A. KNOTT et al., Defendants.

Replication of Complainant to the Answer of John A. Knott, Joseph P. Rice, and Frank A. Wightman, Railroad Commissioners.

This replicant, saving and reserving to itself all and all manner of advantages of exception which may be had and taken to the manifold errors, uncertainties and insufficiencies of the answer of the said defendants, for replication thereunto saith that it doth and will aver, maintain, and prove its said bill to be true, certain and sufficient in the law to be answered unto by the said defendants, and that the answer of the said defendants is very uncertain, evasive and insufficient in law to be replied unto by this replicant; without that that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed, or avoided, traversed, or denied, is true; all which matters and things this replicant is ready to aver, maintain and prove as this honorable Court shall direct, and prays as in and by its said bill it hath already prayed.

WELLS H. BLODGETT,
C. W. TRAVOUS,
FRANK HAGERMAN,
Solicitors for Complainant.

Received a copy of the foregoing replication, and it may be filed as of proper time.

HERBERT S. HADLEY,
Attorney General;
JOHN KENNISH,
SANFORD B. LADD,
Solicitors for said Defendants.

90 Afterwards, towit, on the 17th day of February 1906 the replication of complainant to the answer of Herbert S. Hadley, Attorney General, was filed. Said replication is in words and figures as follows:—

In the United States Circuit Court for the Western Division of the Western District of Missouri.

In Equity. No. 3000.

THE WABASH RAILROAD COMPANY, Complainant,
vs.
JOHN A. KNOTT et al., Defendants.

Replication of Complainant to the Answer of Herbert S. Hadley, Attorney General.

This replicant, saving and reserving to itself all and all manner of advantages of exception which may be had and taken to the manifold errors, uncertainties and insufficiencies of the answer of the said defendant, for replication thereunto saith that it doth and will aver, maintain, and prove its said bill to be true, certain and sufficient in the law to be replied unto by the said defendant, and that the answer of the said defendant is very uncertain, evasive and insufficient in law to be replied unto by this replicant; without that that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed, or avoided, traversed, or denied, is true: all which matters and things this replicant is ready to aver, maintain and prove as this honorable Court shall direct, and prays as in and by its said bill it hath already prayed.

WELLS H. BLODGETT,
C. W. TRAVOUS,
FRANK HAGERMAN,
Solicitors for Complainant.

Received a copy of the foregoing replication, and it may be filed as of proper time.

HERBERT S. HADLEY,
Attorney General;
JOHN KENNISH,
SANFORD B. LADD.
Solicitors for said Defendant.

91 Afterwards, towit, on the 17th day of February A. D. 1906, the replication of complainant to the answer of Joseph Sanderson et al. was filed.

Said replication is in words and figures as follows:—

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 3000.

THE WABASH RAILROAD COMPANY, Complainant,
vs.
JOHN A. KNOTT et al., Defendants.

Replication of Complainant to the Answer of Joseph Sanderson, J. S. Peppard and Sidney Smith, Shippers.

This replicant, saving and reserving to itself all and all manner of advantages of exception which may be had and taken to the manifold errors, uncertainties and insufficiencies of the answer of the said defendants, for replication thereunto saith that it doth and will aver, maintain, and prove its said bill to be true, certain and sufficient in the law to be answered unto by the said defendants, and that the answer of the said defendants is very uncertain, evasive and insufficient in law to be replied unto by this replicant; without that that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed, or avoided, traversed, or denied, is true; all which matters and things this replicant is ready to aver, maintain and prove as this Honorable Court shall direct, and prays as in and by its said bill it hath already prayed.

WELLS H. BLODGETT,
C. W. TRAVOUS,
FRANK HAGERMAN,
Solicitors for Complainant.

Received a copy of the foregoing replication, and it may be filed as of proper time.

HERBERT S. HADLEY,
Attorney General;
JOHN KENNISH,
SANFORD B. LADD,
Solicitors for said Defendants.

92 Afterwards, to-wit, on the 26th day of February, 1906, a Motion to Refer case to a Master or appoint an Examiner was filed. Said Motion is in words and figures as follows:—

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 3000.

THE WABASH RAILROAD COMPANY, Complainant,
vs.
JOHN A. KNOTT, JOSEPH P. RICE, and FRANK A. WIGHTMAN, Railroad Commissioners of the State of Missouri; Herbert S. Hadley, Attorney General of the State of Missouri, and Joseph Sanderson, J. S. Peppard, and Sidney Smith, Defendants.

The defendants, John A. Knott, Joseph P. Rice and Frank A. Wightman, Railroad Commissioners of the State of Missouri, and Herbert S. Hadley, Attorney General of the State of Missouri, pray and move the court to make an order referring this cause to one of the standing masters of the court or to a Special Master to be appointed by the court, under proper directions therefor, to take the evidence herein and report the same to the court, with or without findings of fact by such Master, with all convenient speed, or an order appointing an examiner to take the testimony in the cause and return such testimony into court with all convenient speed.

HERBERT S. HADLEY,
Attorney General;
JOHN KENNISH,
Assistant Attorney General;
Solicitors for Defendants.

SANFORD B. LADD,
Of Counsel.

93 Afterwards, to-wit, on the 27th day of February, 1906, a motion for oral hearing in open court was filed. Said motion is in words and figures as follows, to-wit:—

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 2988.

ST. LOUIS AND SAN FRANCISCO RAILROAD COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, and Joseph P. Rice, John A. Knott, and Frank A. Wightman, Railroad Commissioners of the State of Missouri, et al., Defendants.

No. 2989.

THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY.
Complainant,
vs.
SAME, Defendants.

No. 2990.

THE ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

No. 2991.

THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

No. 2992.

THE ST. LOUIS, KANSAS CITY & COLORADO RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

No. 2993.

THE KANSAS CITY SOUTHERN RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

94 No. 2994.

THE ST. LOUIS & HANNIBAL RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

No. 2995.

THE MISSOURI PACIFIC RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

No. 2996.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

No. 2997.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

No. 2998.

CHICAGO, BURLINGTON & QUINCY RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

No. 2999.

QUINCY, OMAHA AND KANSAS CITY RAILROAD COMPANY, Complainant,
vs.
SAME, Defendants.

No. 3000.

THE WABASH RAILROAD COMPANY, Complainant,
vs.
SAME, Defendants.

No. 3001.

THE ST. JOSEPH & GRAND ISLAND RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

95 No. 3002.

KANSAS CITY, CLINTON & SPRINGFIELD RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

No. 3003.

CHICAGO GREAT WESTERN RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

No. 3004.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

No. 3006.

THE CHICAGO & ALTON RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

Motion.

Complainant in each one of the above entitled causes moves the court to set this case down for hearing upon evidence to be adduced orally in open court on final hearing.

FRANK HAGERMAN,
Solicitor for Complainants.

The above motion may be treated as if separately made and filed in each of above cases, and due and timely notice thereof is acknowledged.

HERBERT S. HADLEY,
JOHN KENNISH,
SANFORD B. LADD,
Solicitors for the Answering Defendants.

96 Afterwards, to-wit, on the 5th day of March, 1906, the following order was filed and entered of record:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD CO., Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendants.

Also

In Equity.

RAILROAD COMPANIES
vs.
HE-BERT S. HADLEY, Attorney General of the State of Missouri, et al., Being Cases Numbered 2989, 2990, 2991, 2992. 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003. 3004, and 3006.

Order.

The applications, in the nature of a motion, of the complainants for an oral hearing in open court of the evidence herein, and the motion of the defendants for a reference to a Master or the appointment of an Examiner to take the testimony herein, having been submitted to the court, and the causes being at issue, the court decides to refer the same to a Special Master.

It is accordingly ordered that the above numbered causes be, and they are hereby, referred to Frank L. Scofield, Esq., as Special Master, with directions to take the evidence orally on the issues involved, and to report his findings of facts thereon to the court at the earliest time practicable, together with the evidence in the causes.

(1) He shall so hear, and only until the court otherwise orders, such above numbered causes as the parties by their counsel shall at the beginning of the inquiry agree to be heard.

97 (2) The Special Master, on reasonable notice, by mail or otherwise, deemed by him most advisable, to the counsel of the respective parties, shall fix the times and places for the taking of testimony, and he is authorized to fix the same as to him may

seem most convenient to the parties in interest, having regard to the suitability and necessity of such times and places.

(3) The Special Master is authorized to employ a competent and reliable stenographer, whose compensation shall be determined by the court, to take down the testimony and reduce the same to writing.

(4) The court directs that the Special Master shall proceed, after the beginning of the taking of testimony, with all reasonable speed, as it is important to all concerned that the hearing of the causes shall be expedited. To this end, the Special Master will require respective counsel to present their testimony promptly, and confine the same to the issues involved, in order to avoid, as far as practicable, the growing evil in practice before Masters of unduly burdening the record with irrelevant and immaterial matters and the litigants with unnecessary costs.

(5) The Special Master shall permit any pleadings to be amended as by Equity Rule provided, and rule upon the admissibility of any evidence, and may refer to the court any question which arises before him in the progress of the hearing.

(6) The Clerk of this court will forthwith furnish the said Special Master with a certified copy of this order, and without further or special order turn over to said Special Master, taking his receipt therefor, any pleadings or court papers pertaining to the causes being investigated by him, on his request made therefor.

(Signed) JNO. F. PHILIPS, *Judge.*

98 Afterwards, to-wit, on the 11th day of June, 1907, a Motion was filed. Said Motion is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD CO., Complainant,

vs.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendants.

Also

In Equity.

RAILROAD COMPANIES

vs.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004, and 3006.

Motion.

Now comes complainant in each of the above entitled causes and moves the court for leave to file an amended and supplemental bill

seeking to enjoin the enforcement of the various acts of the legislature regulating rates adopted at the session in 1907, and making as additional parties defendant H. R. Oglesby, Railroad Commissioner, and the county judges and treasurers of the counties through which each of the complainant's lines run, together with citizens traveling upon the road of each complainant as passengers, all as will be more fully shown by the amended and supplemental bill to be presented upon the hearing of this motion.

FRANK HAGERMAN,
Solicitor for Complainants.

99 Afterwards, to-wit, on the 13th day of June, 1907, the following restraining order was filed and entered of record:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity No. *No.* 3000.

WABASH RAILROAD COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendants.

Order.

The complainant upon this June 13th, 1907, asked, pending a hearing of the application to file an amended and supplemental bill, the general form of which has been submitted to the court, the right to temporarily file same and for a restraining order, but in as much as said application to file the bill for a temporary injunction has been set and noticed for hearing upon June 14th, 1907, at the first time convenient to the court, and it appearing to the court that it is desirable that a full argument be had after notice, yet that great harm might be done and much confusion arise if the status quo should be changed, and that it is to the best interest of the public and all parties interested that such status quo should be maintained until such hearing, it is therefore, upon the court's own motion, ordered that until further order herein, the complainant, its officers, agents and employés be and they are hereby restrained from putting in force the maximum freight and passenger rates provided by the legislative acts of 1907 mentioned in said bill and from complying with said acts, and the application for a restraining order will be heard with that for leave to file said amended bill.

(Signed) SMITH McPHERSON, *Judge.*

100 Afterwards, to-wit, on the 14th day of June, 1907, the following order was filed and entered of record, to-wit:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 3000.

WABASH RAILWAY COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendants.

Order.

The complainant upon this June 14th, 1907, presented its amended and supplemental bill, and asked leave to file the same and for a restraining order or temporary injunction. The Court was advised by the Assistant Attorney General, who appeared, that the Attorney General is absent and desired to be heard, and in the meantime, that suits were this day by the Attorney General instituted in the Circuit Courts of the State to require the various railroad companies of the State to put in force the rates fixed by the acts of the Legislature mentioned in the bill. It is thereupon ordered that the matter be set down for hearing upon the 15th day of June, 1907, at 2 o'clock p. m., and the supplemental bill herein shall be deposited with the clerk. And it appearing to the court that it is desirable that a full hearing be had of the various matters, yet that great harm might be done and much confusion arise if the status quo should be changed, and that it is to the best interest of the public and all parties interested that such status quo should be maintained until such hearing, it is therefore, upon the Court's own motion, again ordered that until further order herein, the complainant, its officers, agents, and employés, be and they are hereby restrained from
101 putting in force the maximum freight and passenger rates provided by the legislative acts of 1907 mentioned in said bill and from complying with said acts, and the application for a restraining order and temporary injunction will be heard with that for leave to file said amended bill.

(Signed) SMITH McPHERSON, *Judge.*

102 Afterwards, to-wit, on the 15th day of June, 1907, a Notice was filed. Said Notice is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD CO., Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendants.

Also

In Equity.

RAILROAD COMPANIES
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004 and 3006.

Notice.

To Defendants and their counsel:

Complainants will at the court room at Kansas City, Missouri, upon June 14th, 1907, at ten o'clock A. M., or as soon as counsel can be heard, ask leave of court to file an amended and supplemental bill in each of the foregoing cases, in substantial form shown by copy hereto attached, and at the same time ask for a temporary injunction.

FRANK HAGERMAN,
Solicitor for Complainants.

Received copy of this notice June 11, 1907.
HERBERT S. HADLEY,
Solicitor for Defendants.

103 Afterwards, to-wit, on the 17th day of June, 1907, the following order was filed and entered of record, to-wit:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 3000.

WABASH RAILROAD COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendants.

Order.

This cause came on for hearing this 17th day of June, 1907, the parties appearing by their counsel in response to notice, and the court being fully advised in the premises, orders and adjudges:

1. Complainant's motion for leave to file an amended and supplemental bill is sustained and such leave is given, the same to be filed as of June 11th, 1907.

Upon such filing, process shall be issued so that if the court hereafter decides that the ends of justice require, and the rules of equity permit, the said bill may be treated as an amended, supplemental, ancillary, dependent or original bill.

To said bill, each of the parties named therein shall be and is hereby made a party.

2. Complainant's application for a temporary injunction is, as to the maximum freight laws of 1907, sustained. Until the further order of court herein, the defendants and each of them are enjoined from doing any act, attempting to recover any penalty, seeking to enforce or having enforced, or asserting any claim or right under or by virtue of either of the maximum freight rate acts of 1907 mentioned in said amended and supplemental bill, to the end that each defendant as to each of said acts of 1907 be restrained as
104 effectually as the defendants were enjoined by the temporary injunction heretofore issued herein as to and in connection with the act of 1905. By consent of complainant, the injunction bond heretofore filed shall stand as applicable to this order, the same as if it were executed and filed this day.

3. As to the passenger act of 1907, the order heretofore entered upon the court's own motion, shall remain in force until June 19th, 1907, at six o'clock a. m., at which time the rates fixed by said act shall be put and kept in force for three months without prejudice to the rights of either party for the purpose of ascertaining more definitely the extent that experience will show that the rates under said act reduce or increase the earnings of complainant.

The court reserves the power upon the application of any person interested, to hereafter make such further or other order upon this subject as it deems proper.

4. Pending the further hearing and final determination of this case, the complainant shall preserve and keep in existence its waybills for state freight.

(Signed) SMITH McPHERSON, *Judge.*

105 The amended and supplemental Bill so filed on the 11th day of June, A. D. 1907, is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 3000.

WABASH RAILROAD CO., Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendants.

Complainant's Amended and Supplemental Bill.

To the Honorable Judges of the Circuit Court Aforesaid:

Your orator, by leave of court, brings this, its amended bill and thereupon avers:

1. Upon the 16th day of June, 1905, it filed herein against the defendants in the above entitled case its original bill, (reference to which is now made the same as if copied herein), seeking to enjoin as illegal, unconstitutional and confiscatory the enforcement of the provisions of an act of the legislature of the State of Missouri (herein called the "Act of 1905"), seeking to fix certain maximum freight rates.

2. The said legislature also passed in 1905 an act approved April 14, 1905, in words and figures as follows:

"Corporations, Private: Railroad Classification. Charges—Commissioners.

An Act to Amend Article IV, Chapter 12, of the Revised Statutes of Missouri of 1899, Entitled 'Railroad Classification, Charges, Commissioners,' by adding a New Section Thereto, to be Known as Section 1195*a*.

Section 1. Fixing charges for carrying undressed stone, crushed rock and building or paving brick.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION 1. That article IV, Chapter 12, of the Revised Statutes of Missouri of 1899, entitled 'Railroad Classification, Charges, Commissioners,' be, and the same is hereby amended by adding a new section thereto, to be known as Section 1195*a*, to read as follows:

106 SECTION 1195*a*. No individual, company or corporation owning, operating, managing or leasing any railroad or part of a railroad in this State, shall charge for or receive for carrying a carload of forty thousand pounds of undressed stone, sand or building or paving bricks more than forty cents per ton for the first ten miles, twenty cents per ton for the second ten miles, or more than five cents per ton for each additional ten miles, and any excess in

weight shall be charged for at the same rate per ton as for an even carload.

Approved April 14, 1905."

3. Since the filing of said original bill and upon or about January 1, 1907, the office of the said Joseph P. Rice as a railroad and warehouse commissioner expired by limitation of the time for which he was elected and H. R. Oglesby has been duly elected and qualified as his successor, and is now acting as such. It is, therefore, proper that he should be made a party defendant hereto.

4. Each of the railroad companies operating railroads in the State of Missouri at the same time filed in this court original bills to the same purport and for the same purpose, against said members of the Railway and Warehouse Commissioners and the Attorney General and certain shippers upon the line of its road. Such proceedings were had therein that temporary injunctions were issued, the causes were put at issue and duly referred to the Honorable Frank L. Schofield to take certain proofs and make certain findings of fact. The parties agreed that before taking the evidence in all the cases, they would first take that in three of them, temporarily suspending the taking of further testimony in the others. In accordance with said agreement the evidence was taken in the three cases instituted by the Missouri Pacific, Wabash and Chicago, Burlington & Quincy Railway Companies, and the said causes are now ready for submission to the special master upon the original bills so filed, and have been set for argument before him upon June 18, 1907.

5. The Governor of the State, in giving his written reasons for approving the Act of 1905, indicated that it was with some reluctance that he signed same, expressly stating that "the rate on
107 live stock seems unjust." So at the time of submitting his biennial general message to the 43rd General Assembly of the State, he called attention to the litigation aforesaid, and suggested a modification and amendment of the law to meet fatal defects therein. Thereafter, on February 27, 1907, he sent a special written message to the legislature, in which, among other things, he said in reference to the Act of 1905:

"The statute enacted by the last General Assembly is defective in the penalty clause, which applies only to railroads. The penalty should be made to apply to persons, corporations and partnerships. The cattle clause should be corrected in the light of the testimony adduced in the freight litigation so as to fix these rates at an amount that will stand the test of the judicial crucible."

6. Pursuant to this request and the acknowledgment thus made of the invalidity of the existing law, the enforcement of which was sought to be enjoined by the original bill, the legislature passed an act (herein called the Act of 1907) which will take effect on June 14, 1907, in words and figures as follows:

"Corporations, Private: Railroads—Freight Charges.

An act to repeal an act of the 43rd general assembly, approved April 15, 1905, entitled 'An act to amend chapter 12 of the Revised Statutes of Missouri, revision of 1899, entitled "Corporations, private," by repealing section 1194 of said Revised Statutes, being part of article IV of said chapter, concerning railroad classification, charges, commissioners, and to enact in lieu thereof the following new sections providing for the regulation of freight charges by railroads and the recovery of penalties for the violation thereof,' and to repeal an act of the 43rd General Assembly, approved April 14, 1905, entitled 'An act to amend article IV, chapter 12, of the Revised Statutes of Missouri, 1899, entitled "Railroad classifications, charges, commissioners," by adding a new section thereto, to be known as section 1195*a*, fixing the charges for carrying undressed stone, crushed rock and building or paving brick,' and to enact in lieu thereof certain new sections, to be known as sections 1194, 1194*a*-1, 1194*b*-1 and 1194*c*-1, providing for the regulation of freight charges by railroads and prescribing the punishment for a violation thereof, which new section shall read as follows:

SECTION 1194. Classification and charges for carrying freight in car load lots.
SECTION 1194*a*. Penalty for violation.
SECTION 1194*b*. Not to relieve railroad from complying with other laws.
SECTION 1194*c*. Repealing conflicting acts.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION 1. That sections 1194, 1194*a* and 1194*b* of an act of the 43rd general assembly, approved April 15, 1905, concerning railroad classifications, charges, commissioners, and providing for a
108 penalty for a violation thereof, said sections being enacted in lieu of section 1194, chapter 12 of the Revised Statutes of Missouri, 1899, in "corporations, private," and section 1195*a* of an act of the 43rd general assembly, approved April 14, 1905, concerning railroad classifications, charges, commissioners, fixing charges for carrying undressed stone, crushed rock and building or paving brick, be and the same are hereby repealed, and the following, to be known as sections 1194, 1194*a*-1, 1194*b*-1 and 1194*c*-1 of said Revised Statutes are enacted in lieu thereof.

SECTION 1194. No individual, company or corporation owning, operating, managing or leasing any railroad, or part of railroad, designated in section 1191 as in classes A, B, or C, shall demand, charge or receive a greater or higher rate for carrying from initial to terminal points in this state articles named in the several classes and the commodities herein designated than is hereinafter provided for, namely: Class D, in car loads of 40,000 pounds minimum weight, not exceeding five cents per one hundred pounds for the

first twenty-five miles, and not exceeding one-half cent per hundred pounds for the second twenty-five miles, or fractional part thereof, and not exceeding one-half cent per hundred pounds for each additional twenty-five miles or fractional part thereof. Class E, in car loads of 24,000 pounds minimum weight, not exceeding five cents per one hundred pounds for the first twenty-five miles, and not exceeding one-half cent per hundred pounds for the second twenty-five miles or fractional part thereof, and not exceeding one-half cent per hundred pounds for each additional twenty-five miles or fractional part thereof. Class F, in car loads of 30,000 pounds minimum weight, not exceeding five cents per one hundred pounds for the first twenty-five miles, and not exceeding one-half cent per hundred pounds for the second twenty-five miles or fractional part thereof, and not exceeding one-half cent per hundred pounds for each additional twenty-five miles or fractional part thereof. Class G, in car loads of 30,000 pounds minimum weight, not exceeding five cents per one hundred pounds for the first twenty-five miles, and not exceeding one-half cent per hundred pounds for the second twenty-five miles or fractional part thereof, and not exceeding one-half cent per hundred pounds for each additional twenty-five miles or fractional part thereof. Class H, in car loads, in common cars, measuring inside from 29 feet to and including 30 feet and 6 inches in length (to be known as standard cars), not exceeding $8.00 per car load for the first twenty-five miles, and not exceeding $4.00 per car load for the second twenty-five miles or fractional part thereof, and not exceeding $2.00 per car load for each additional twenty-five miles or fractional part thereof of over twelve miles. For the carriage of any of the articles comprising class H, in cars of other lengths for the distances above specified, the following percentages of the foregoing rates per car load shall not be exceeded, namely: In cars of length less than 29 feet, 94 per cent; in cars of length over 30½ feet to and including 32 feet, 104 per cent; in cars of length over 32 feet to and including 33 feet and 9 inches, 107 per cent; in cars of length over 33 feet and 9 inches to and including 36 feet, 110 per cent; in cars of length over 36 feet to and including 38 feet, 113 per cent; in cars of length over 38 feet to and including 40 feet, 116 per cent; in cars of length over 40 feet to and including 42 feet, 125 per cent; in cars of length over 42 feet to and including 44 feet, 135 per cent; in cars of length over 44 feet, 140 per cent of the rates herein specified for cars of the standard length of 29 feet to and including 30 feet and 6 inches shall not be exceeded. All the foregoing lengths to be taken by inside measurements. Class 1, in car loads of 20,000 pounds minimum weight, not exceeding $14.00 per car load for the first twenty-five miles, and not exceeding $2.00 per car load for the second twenty-five miles or fractional part thereof, and not exceeding $2.00 per car load for each additional twenty-five miles or fractional part thereof. For a car load of 40,000 pounds of minimum weight undressed stone, crushed rock,
109 sand, railroad ties, cordwood, building or paving brick, not exceeding 40 cents per ton of 2,000 pounds to the ton for the first fifty miles or fractional part thereof, and not exceeding five cents

per ton per car load for the next ten miles or fractional part thereof, and not exceeding 5 cents per ton per car load for each additional ten miles or fractional part thereof. In computing the rate of freight, according to the provisions of this article, the distance shall be computed from the point where it is received to the point of destination in the state, notwithstanding it may pass from one road to another.

SECTION 1194*a*. Any individual, company or corporation owning, operating, managing or leasing any railroad, or part of railroad, designated in section 1194, or any officer, agent, representative or employee thereof who violates the provisions of section 1194, shall be adjudged guilty of a misdemeanor and, on conviction, shall be punished by a fine of not to exceed $5,000.00: Provided, that the money received from any fine under the provisions of this act shall be paid into the school fund in the county in which the case is prosecuted.

SECTION 1194*b*. This act shall not have the effect of relieving any person, partnership or corporation, owning or operating any railroad in this state from any liability or penalty heretofore incurred for failure to comply with any law of this state.

SECTION 1194*c*. All acts and parts of acts, and all rules and regulations, freight schedules, classifications and groupings by railroad companies, or the railroad and warehouse commissioners of this state, in conflict with the provisions of this act, are hereby repealed and declared void.

Approved March 19, 1907."

By this act an attempt was made to comply with the request of the Governor and to repeal the said Act of 1905, together with that mentioned in paragraph 3 hereof, with the exception that no penalty or liability incurred should be affected by such repeal, the purpose and intention of defendants being to attempt to enforce against your orator all penalties which accrued if the said acts are held to be illegal.

7. In addition thereto, the legislature in 1907 passed certain acts which will take effect upon June 14, 1907, being in words and figures as follows:

"Corporations, Private: Railroads—Freight Charges.

An Act to Amend Article 4, Chapter 12, Revised Statutes of Missouri of 1899 by Adding a New Section Thereto, to be Known as Section 1195*a*, and Relating to Freight Charges and Classifications.

SECTION 1. Fixing freight charges on fruits.
SECTION 2. Inconsistent acts repealed.
SECTION 3. Penalty for violation.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION 1. That article 4, chapter 12, of the Revised Statutes of Missouri, 1899, entitled 'Railroad classification, charges, commis-

sioners,' be and the same is hereby amended by adding a new section thereto, to be known as section 1195*a*, which said section shall read as follows:

SECTION 1195*a*. No individual, company or corporation owning, operating, managing or leasing any railroad or part of railroad in this state, shall charge for or receive for carrying apples and pears in car loads of 24,00[0] pounds minimum weight, more than six cents per hundred pounds for the first twenty-five miles or fractional part thereof, and not more than one cent per hundred pounds for each additional twenty-five miles or fractional part thereof. For strawberries, peaches, grapes and other berries in car loads of 18,000 pounds minimum weight, not exceeding fifteen cents per hundred pounds for the first twenty-five miles or fractional part thereof, and not exceeding two cents per hundred pounds for each additional twenty-five miles or fractional part thereof.

SEC. 2. All acts and parts of acts and all rules and regulations, freight schedules, classification[s] and grouping[s] by railroad[s] companies, or the railroad and warehouse commissioners of this state, in conflict with the provisions of this act, are hereby repealed and declared void.

SEC. 3. Any individual company or corporation owning, operating, managing or leasing any railroad or part of a railroad in this state, violating the provisions of this act, shall, on conviction, be adjudged guilty of a misdemeanor, and subject to a fine of not to exceed one thousand dollars for each offense.

Approved March 19, 1907."

"Corporations, Private: Railroads.

An Act to Provide Transportation on Railroads for the Shippers of Freight in this State in Carload Lots.

SECTION 1. Railroads to issue to certain shippers transportation.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION 1. Whenever any railroad company or corporation doing business within the limits of this state shall receive any live stock to be shipped over the said road or roads by carload lots, said corporation shall, in consideration of the price paid for said carload lots, issue to the shipper, his agent or employee, at the time of making out the contract or bill of lading, a round trip ticket to and from said points designated in said bill of lading, without further expense to said shipper, provided that the points of destination are within this state, and in case said point of destination is without this state, then said railroad corporation shall issue to such shipper, his agent or employee, a round trip tricket to a point within this state nearest to the point without this state to which said shipment of live stock is shipped: Provided, that in case said shipper shall ship more than one car load at any one shipment the said railroad corporation shall not be compelled to give to said shipper more than one round trip ticket with such shipment, which said ticket shall be good on the

freight train on which said stock is shipped, and on all trains on said road carrying passengers on the return trip, and shall be good for a period of ten days, and any railroad company or corporation willfully violating the provisions of this section, or which shall fail, neglect or refuse to furnish and deliver such ticket to such shipper, his agent or employee, shall forfeit and pay, as a penalty, to said shipper, not less than three hundred dollars nor more than five hundred dollars, to be recovered by civil action in any court of competent jurisdiction.

Approved April 4, 1907."

8. All the averments of the original bill apply to the said Act of 1907 and also to each of the acts mentioned in paragraph 7 hereof, except that if for the classes of freight mentioned in the said
111 Acts of 1907 alone, or in all the Acts of 1907, your orator should charge the maximum rate therein authorized and practically capable of being charged, its total gross receipts from state traffic would be reduced in a very large sum, which though differing in items would not be as a whole substantially less than that mentioned in the original bill as to the Act of 1905. Each of said freight Acts of 1907 is violative of the provisions of the constitution to the same extent as was alleged as to the Act of 1905. But the freight Acts of 1907 did not so correct the evils of the former laws as set forth in the original bill, and the rates were thereby fixed at amounts that were unreasonable, and confiscatory, and less than the cost of the service.

9. The Governor in calling for the passage of said Act of 1907, and the legislature in passing the same, did so for the avowed purpose of increasing certain of the maximum rates of the Act of 1905 which they conceived had in this litigation been proved to be unreasonable and confiscatory and could not be enforced. Notwithstanding this, the rates as finally so fixed, considered alone, were not upon such a basis as would return any reasonable or fair compensation to the complainant upon the value of that portion of its property devoted to such use. Even if the laws in existence in 1905 relative to passenger fares, had remained in force, still the freight rates as fixed by the said Acts of 1907 would have been unreasonable and confiscatory, and would not have given any just return upon the value of that portion of your orator's property as a whole devoted to state traffic. However, the legislature of the state, without any fixed or definite knowledge upon the subject of rates, erroneously conceived that if the increase as aforesaid in the freight rates were necessary and were made, there could be a general equalization of rates by a decrease in the passenger rates and so in substance they could be legally overcome and offset any advantage from the increase in freight rates by decreasing the maximum rates to be charged for state passenger traffic about thirty-three and one-third
112 per cent, and thus, while defeating pending litigation, the public as a whole would not be the loser. The result was that at the same session, and as part and parcel of one transaction, and substantially as one law, and to accomplish such purpose, there was passed and the Governor approved, an act herein called the "Passen-

ger Act," which, if valid, will take effect on June 14, 1907. The same reads as follows:

"Corporations, Private: Railroads—Passenger Rates.

An act to repeal sections 1191 and 1192 of chapter 12, article 4, Revised Statutes of Missouri, 1899, entitled 'Railroad classification—charges—commissioners,' by striking out sections 1191 and 1192 and enacting the following new sections in lieu thereof, to be known as sections 1191 and 1192 and 1192*a*.

SECTION 1191. Classification of railroads.
SECTION 1192. Passenger charges regulated.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION 1. That all of sections 1191 and 1192 of chapter 12, article 4 of the Revised Statutes of Missouri, 1899, be and the same are hereby repealed and three new sections be enacted in lieu thereof, to be known as sections 1191 and 1192 and 1192*a*, so that said sections shall read as follows:

SECTION 1191. Roads classified.—All railroads in the state of Missouri are hereby divided into four classes, to be known as class A, class B, class C and class D. Class A shall include all through or trunk line railroads and all branch roads owned, leased, controlled or occupied by such through or trunk line railroad companies or corporations. Class B shall include all other railroads or parts of railroads owned, leased, controlled or occupied, or which may hereafter be owned, leased, controlled or occupied, either wholly or in part, by any trunk line company or corporation. Class C shall include all other railroads of a greater length than forty-five miles. Class D shall include all roads less than forty-five miles in length not owned, leased, controlled or occupied by any trunk line company or corporation.

SECTION 1192. Passenger charges regulated.—Any individual, company or corporation owning, operating, controlling or leasing any railroad or part of a railroad in this state, in the several classifications as herein prescribed, shall be limited to a compensation per mile, for the transportation of any person with ordinary baggage not exceeding one hundred pounds in weight, as follows: In classes A, B and C, not exceeding two cents per mile, and in class D, not exceeding four cents per mile: Provided, that no such individual, company or corporation shall charge, demand or receive any greater compensation per mile for the transportation of children of the age of twelve years or under than one-half of the rate above prescribed; and provided further, that the rates for transportation herein prescribed may be reduced, as hereinafter provided.

SECTION 1192*a*. Any individual, company or corporation, or any agent or officer thereof, who shall violate any of the provisions of section 1192 of this act, shall be deemed guilty of a misdemeanor, and upon conviction, shall pay a fine of not less than one hundred nor more than five hundred dollars.

Approved February 27, 1907."

10. All the averments of the original bill apply to said Passenger Act. It is violative of each constitutional provision men-
113 tioned, and subject to each objection made, in the original bill to the Act of 1905, and all the facts there averred as to why the Act of 1905 should be held to be void and action thereunder restrained, are not only true as to the Acts of 1907 but also as to said Passenger Act. If enforced, it will reduce the earnings of your orator from said passenger business in the practical and ordinary operation of its road, substantially one-third. The state passenger earnings for the year 1906 were in the aggregate substantially one million eight hundred and fifty five thousand dollars, and yet, if the Passenger Act as aforesaid had been applied thereto, said earnings would have been reduced at least to the sum of one million two hundred and thirty seven thousand dollars, or an annual loss of six hundred and eighteen thousand dollars. The property of your orator in the state is used as a whole both for state and interstate freight and passenger business, and, as such, is quite valuable. The value of that portion devoted to the carriage of state business, considered as a whole, or separately as to the passenger business only, is such that in either case the reduction in rates by said Passenger Act would not only fail to make any reasonable return on such valuation, but would cause such business to be done at an actual loss.

11. The said Passenger Act was passed for the avowed purpose of reducing the state passenger rates of your orator so as to offset and overcome a supposed increase of certain of the state freight rates made under the Act of 1907, and the attempt was made to frame each act so as to avoid the injunctive relief in this and in each action heretofore instituted by the other railroad companies operating lines in Missouri. As your orator is informed and believes, the state and defendants now unjustly and improperly claim that since upon the face of these acts provision is only made for general penalties, there is no remedy by injunction; that the original bill can no longer be maintained, and that the state through its officers is entitled
114 to have enforced the various statutory penalties for each shipment made and each passenger carried at a rate in excess of that fixed by the freight Acts of 1907 and the said Passenger Act, as well as penalties under the abandoned Act of 1905.

As to the said contentions, your orator respectfully submits:

(*a*) Such view, if adopted, would result in a multiplicity of suits, the harassment of your orator, and tedious and expensive litigation, because if an injunction be not herein granted, and said acts be not complied with, many suits and prosecutions will be brought and many fines and penalties imposed and no opportunity will be afforded to your orator to present its claim of the unconstitutionality of said act and the confiscatory nature of the rates fixed. Such an inquiry involves the examination of long and tedious accounts, the study of books and papers and an expert knowledge of the trier of fact, none of which could be properly had in the many trials to be had in a court of law to enforce the penalties. Hence the result would be pending the inquiry, your orator would be required to put in and enforce said rates to its irreparable damage, because it would

be compelled, pending the litigation, to carry traffic at the reduced rates with no practicable way of recovering the difference between the rates now charged and as so reduced.

(*b*) The real purpose of the original bill was to determine whether that portion of the property of your orator devoted to state business could, if the Act of 1907 were enforced, receive such return upon its value as would be fair, reasonable and not confiscatory. Upon the trial of the three cases heard by the special master, such was the theory adopted by both parties, and the proofs were by both of them directed to that end. In view of this situation, it is respectfully submitted that the full determination of all questions of rates in the pending cases can not be defeated or impaired by the repeal by the state legislature of the particular act questioned by the original bill and the passage of another and different act in such
115 form as to prevent any adequate relief from a court of equity and to remit a complainant to a defense in numberless actions of law to recover penalties. But if the rights of the parties should be ascertained by a court of equity, this can be done adequately through the injunctive process, surrounded and controlled by such conditions as may be proper and just in the premises.

(*c*) It would be unjust and inequitable to permit officers of the state to claim that the validity of an act alleged to be confiscatory in its nature should be determined in a way other than would afford a full and fair hearing, which can only be by the processes of a court of equity. In order that there may be the fullest and fairest hearing of the controversy, your orator consents that any state officer, or any private person or corporation may appear herein and show, if they can, why the rates fixed in the acts aforesaid are lawful, reasonable or enforcible, and that the court may make any reasonable order to protect the public and speed the hearing.

(*d*) Each of the special duties devolving upon the members of the Board of Railroad Commissioners and the Attorney General, as stated in the original bill, applies to the Acts of 1907 and the Passenger Act aforesaid, so that even as an original bill, this proceeding could be maintained.

(*e*) The constitution of the state provides that all penalties such as are attempted to be prescribed for the violation of the acts herein mentioned go to the school-fund of the various counties, and the statutes of the state impose the special duty of collecting the same and preserving and investing the proceeds thereof, upon the county court and the treasurers of the respective counties of the state. Joseph M. Patterson, Charles E. Moss and George Dodd are the judges of the county, and Arthur C. Warner is treasurer, and each is a resident and citizen of the county of Jackson State of Missouri, through
116 which the line of your orator passes, and from and to which there is transported a very large part of the state and passenger traffic, the maximum rates for carriage of which are fixed by said Acts of 1907 and said Passenger Act. Each of said judges and said treasurer is hereby made a defendant. Each proposes and intends and will, unless restrained herein, seek to enforce and collect

the penalties provided for in the said acts. In view of the fact that the line of your orator's road is not confined to one county, it is inconvenient, impracticable, expensive, and hence, unnecessary to make the county judges and the treasurer of each county parties hereto, but such as are named can be, and are sued as a class so that others similarly situated may, if they desire, appear herein and be heard upon their own behalf or through those now made parties, or, if necessary, be brought in by process of court and required to make defense.

(*f*) Julius H. Lang and Charles A. Kirtley are citizens and residents of Kansas City, Jackson county, Missouri, who constantly travel over your orator's road, who have demanded and supported the passage of the Passenger Act aforesaid, and threaten to and will seek to enforce its provisions unless the rates therein fixed are established and put in force. They are hereby made defendants, and they represent a class of passengers and travelers so numerous that it is impracticable to join them all, and those named are made defendants herein for the purpose of determining, as against your orator, the rights of the entire traveling public under the said Passenger Act.

12. The rates fixed by each the said Acts of 1907 and said Passenger Act and as a whole are so unreasonable and confiscatory that a compliance therewith will force an unreasonable reduction and confiscation of your orator's entire revenue contrary to the provisions of the fourteenth amendment to the constitution of the
117 United States and provisions of the constitution. Besides this, to enforce the rates so fixed in any of said acts would necessarily affect the interstate rates upon the same commodities. Owing to the peculiar geographical location of the state of Missouri, the state rates necessarily affect all interstate rates upon the same commodities and travel and this results as a practical and unavoidable matter in the conduct of business affairs, the location of markets, business houses, the extent of territorial distribution from the various cities in the state and the necessities of travel. In addition to this some of the chief lines of railroad in Missouri, in running to and from points therein, pass out of the state so as to make any transportation between such points interstate commerce. Hence when a state rate between such points when lines wholly within the state is fixed lower than the interstate rate the companies whose transportation is interstate must meet that rate or carry none of the traffic. Such traffic constitutes a very substantial portion of the entire state traffic. Congress has attempted to legislate upon the subject of interstate rates, and since, as a matter of fact, none of said state rates can be enforced without affecting interstate rates, all of the said legislative acts are unconstitutional and void and of no effect and violative of section 8, article 1 of the Constitution of the United States.

In consideration whereof, and forasmuch as your orator is remediless in the premises and by the strict rules of the common law can only have relief in a court of equity where matters of this kind are

properly cognizable and relievable, your orator prays that: (1) Each of the said Acts of the Legislature of Missouri of 1907, herein set forth, including said Passenger Act, be declared unconstitutional, unenforcible and not binding upon your orator. (2) all the relief asked in the original bill as to the Act of 1905 be granted as to the said Acts of 1907. (3) The temporary injunction heretofore issued herein be extended against the defendants to the original and to this bill so as to cover and include any claim or right under
118 or by virtue of any of said freight Acts of 1907 and said Passenger Act and be made permanent. (4) Your orator have such other and further relief as is just and equitable.

And may it please your Honors to grant unto your orator a writ of subpœna of the United States, issuing out of and under the seal of this honorable court, directed to each of the said defendants, including each of those hereby and herein made a party defendant, commanding them and each of them on a day certain therein to be named and under a certain penalty, to be and appear before this honorable court then and there to answer, but not under oath, an answer under oath being expressly waived, all and singular the premises and to stand to, perform and abide by such order, direction and decree as may be made against them in the premises.

And your orator will ever pray, etc.

WELLS H. BLODGETT,
C. N. TRAVONS, AND
J. L. MINNIS,
Solicitors for Complainant.

FRANK HAGERMAN,
Of Counsel.

STATE OF MISSOURI,
City of St. Louis, ss:

I, T. J. Tobin, upon oath, say that I am Auditor of complainant in above entitled bill, and as such am familiar with the traffic operations of said company, and all the matters and things mentioned in the said bill which I have read. I know the contents thereof and same are true of my own knowledge, except as to those matters therein stated upon information and belief, and as to those matters, I believe them to be true.

T. J. TOBIN.

Subscribed and sworn to before me this 13 day of June, 1907.
My commission expires June 18, 1907.

[SEAL.] HANNAH BADGLEY,
Notary Public.

Thereupon a writ of subpœna was issued on the 25th day of June, 1907.

119 Afterwards, to-wit, on the 15th day of July, 1907, the following order was filed and entered of record:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 3000.

WABASH RAILROAD COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendants.

Order.

This cause coming on for hearing this July 15th, 1907, leave is hereby given to complainant to file an Amendment to Complainant's Bill of Complaint. The application for a temporary injunction against Herbert S. Hadley, Attorney General of the State of Missouri, from prosecuting the suit in the state court which he has instituted against the complainant is continued until the expiration of the ninety days' test heretofore ordered, unless the court should hereafter set the same down for hearing at an earlier date.

(Signed) SMITH McPHERSON, *Judge.*

120 Afterwards, towit, on the 16th day of July, A. D. 1907, an amendment to complainant's bill of complaint was filed. Said amendment is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 3000.

THE WABASH RAILROAD COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendants.

Amendment to Complainant's Bill of Complaint.

The complainant, by leave of court, presents this its amendment to the bills heretofore filed herein, and respectfully shows to the court that it desires to, and does hereby present the matters and things hereinafter set forth, as paragraphs 13, 14, 15, 16, 17, 18, 19, 20 and 21, of the amended and supplemental bill heretofore filed herein, to be inserted therein immediately following paragraph 12 and preceding the prayer thereof. Thereupon complainant avers:

13. It hereby refers to the original and to the amended and supplemental bills herein, with the same force and effect as if copied herein.

14. Conceiving, and the defendants insisting, that an additional amended and supplemental bill should only be filed after notice,

and upon order of court, and there being no judge of the court within the district at the time, the complainant filed herein, on June 11th, 1907, its written application for leave to file an amended and supplemental bill, reference to which application is made the same as if copied herein. On the same day, there was served upon
121 counsel for defendants in the original bill, and accepted by them, a written notice, together with a copy of the form of the said amended and supplemental bill, which notice recited that the application to file same, and for a temporary injunction would be presented to the court upon June 14, 1907, at the opening of the court at ten o'clock a. m. Said notice, the acceptance and evidence of service thereof, and form of bill, are upon file and are hereby referred to with the same force and effect as if set out herein. On June 13, 1907, at ten o'clock a. m., there then being a judge of the court within this district, and court being open, complainant presented and asked, pending a hearing of the application to file its amended and supplemental bill the general form of which was then submitted to the court, the right to temporarily file same, and for a restraining order, whereupon the court made an order entered herein upon June 13, 1907, of its own motion in the interests of the public and of all parties, maintaining the status quo pending the hearing, and restraining complainant from putting in force the maximum freight and passenger rates provided by the legislative acts of 1907 mentioned in said bill, and from complying with said acts, reference to said order is now made as fully as if copied herein.

15. Afterwards, on June 14, 1907, Herbert S. Hadley, Attorney General of the State of Missouri, and one of the defendants herein, by his counsel, in flagrant disregard and contempt of the jurisdiction of this court, filed in the circuit court of Kansas City, Missouri, his two petitions in equity in the name of the state at his relation as Attorney General, against this complainant, one asking that the court by mandatory injunction require complainant to put in force the maximum freight rates provided by the said legislative acts of 1907 mentioned in the amended and supplemental bill, and to comply with said acts, and the other as asking the same relief as to the rates fixed by the Passenger Act of 1907. And at his solicitation, the judge of said state court did, in each of said
122 cases, at the said hours of the same day, without notice, issue its restraining order returnable upon the 24th day of June, 1907, requiring the forthwith doing of such acts by this complainant. Complainant asks leave to produce upon the hearing of this petition, certified copies of said proceedings in the state court, and refer to them as fully as if copied herein.

16. Thereafter at the time fixed in said notice, and upon June 14, 1907, at ten o'clock a. m., there was presented to this court the applications of complainant for leave to file said amended and supplemental bill and for a temporary injunction, and defendants asked a continuance of the hearing for one day, which the court granted, and upon its own motion ordered that said amended and supplemental bill should be deposited with the clerk (which was then and there done), that in the interest of the public and all parties the

status quo should be maintained, and that complainant in the meantime and until the further order of court should be restrained from putting in force the maximum freight and passenger rates fixed by the legislative acts of 1907 mentioned in the said bill, and from complying with said acts. (A' reference to the said order is now made with the same force and effect as if copied herein. In the meantime the said restraining orders from the state court were served upon complainant. Thereafter, upon June 15, 1907, the said applications were by the counsel for the respective parties and by this court, taken under advisement.

17. Thereafter upon June 17, 1907, this court made and entered an order which, omitting title, is in words and figures as follows:

Order.

"This cause came on for hearing this 17th day of June, 1907, the parties appearing by their counsel in response to notice, and the court being fully advised in the premises, orders and adjudges:

1. Complainant's motion for leave to file an amended and supplemental bill is sustained and such leave is given, the same to be filed as of June 11th, 1907.

Upon such filing process shall be issued so that if the court
123 hereafter decides that the ends of justice require, and the rules of equity permit, the said bill may be treated as an amended, supplemental, ancillary, dependent or original bill.

To said bill, each of the parties named therein shall be and is hereby made a party.

2. Complainant's application for a temporary injunction is, as to the maximum freight laws of 1907, sustained. Until the further order of the court herein, the defendants and each of them are enjoined from doing any act, attempting to recover any penalty, seeking to enforce or having enforced, or asserting any claim or right under or by virtue of either of the maximum freight rate acts of 1907 mentioned in said amended and supplemental bill, to the end that each defendant as to each of said acts of 1907 be restrained as effectually as the defendants were enjoined by the temporary injunction heretofore issued as to and in connection with the act of 1905. By consent of the complainant, the injunction bond heretofore filed shall stand as applicable to this order, the same as if it were executed and filed this day.

3. As to the passenger act of 1907, the order heretofore entered upon the court's own motion shall remain in force until June 19th, 1907, at 6 o'clock a. m., at which time the rates fixed by said act shall be put and kept in force for three months without prejudice to the rights of either party for the purpose of ascertaining more definitely the extent that experience will show that the rates under said act reduce or increase the earnings of complainant.

The court reserves the power, upon the application of any person interested, to hereafter make such further or other order upon this subject as it deems proper.

4. Pending the further hearing and final determination of this

case, the complainant shall preserve and keep in existence its way-bills for state freight.

SMITH McPHERSON, *Judge.*"

Accordingly said bills were forthwith marked filed as of June 11, 1907, as in and by said order provided. Subpœnas have been duly issued as in and by said order provided, and served upon most of the defendants, and as to the others are in the marshal's hands for service and not yet returned, and complainant is not yet advised as to whether actual personal service has been had.

18. Thereafter upon June 24, 1907, the circuit court of the City of St. Louis, Missouri, upon the application of the said Attorney General entered an order dismissing the case mentioned in paragraph 15 hereof which was filed against this complainant for a mandatory injunction to require it to put in force the maximum freight rates provided by the said legislative acts of 1907, and upon the same day the same court, upon the application of the said Attorney General, entered an order setting aside the restraining order issued in the case mentioned in the same paragraph to require it to put in force the maximum passenger rates fixed by the legislative act of 1907
124 aforesaid, but did not dismiss the case, the Attorney General insisting that it should remain pending. He now threatens to and he will, unless enjoined herein, proceed with the trial and prosecution of the same on and after September 20, 1907, at the expiration of the ninety day test mentioned in the order hereinbefore set out.

19. The said state court has no jurisdiction in the premises and has no right or power to compel complainant by injunction to put in force the maximum passenger rates aforesaid, and any attempt so to do would deny to complainant the protection accorded to it by the fourteenth amendment to the constitution of the United States, which it now claims. Such attempt to oust this court of its jurisdiction, is in contempt thereof, and as to it was and is futile.

20. With the exception hereinafter stated, the facts alleged herein in paragraphs 13 to 18 inclusive, are true as to each of the following railway companies in the state of Missouri; St. Louis & San Francisco; Atchison, Topeka & Santa Fe; St. Louis Southwestern; Chicago, Rock Island & Pacific; St. Louis, Kansas City & Colorado; Kansas City Southern; St. Louis & Hannibal; Missouri Pacific; St. Louis Iron Mountain & Southern; Missouri, Kansas & Texas; Chicago, Burlington & Quincy; Quincy, Omaha & Kansas City; Wabash; St. Joseph & Grand Island; Kansas City, Clinton & Springfield; Chicago Great Western; Chicago, Milwaukee & St. Paul, and Chicago & Alton. Each of said companies had at the same time filed in this court bills similar in nature to the original bill herein to enjoin the enforcement of the Acts of 1905, in which temporary injunctions had been issued and which cases are still pending and undetermined. Said exception is that the cases in the state court mentioned in paragraph 15 hereof against the St. Louis & San Francisco Railroad Company; St. Louis Southwestern Railway Company; St. Louis, Kansas City & Colorado Railway Company; St. Louis & Hannibal Railway

Company; Missouri Pacific Railway Company; St. Louis Iron Mountain & Southern Railway Company; Missouri, Kansas & Texas
125 Railway Company and the Wabash Railroad Company, were filed in the circuit court of St. Louis, Missouri, while those against the other companies were filed in the circuit court of Jackson County, Missouri, at Kansas City. With this exception, similar action to that herein averred was taken in each case pending in this court, and the Attorney General threatens to and unless restrained will, proceed to prosecute each of said cases in the state courts as hereinbefore alleged. As to several of said complainants, the restraining orders from the state courts were served while the parties were presenting said applications upon June 14.

21. The passenger act of 1907, and each freight act of 1907, is void and of no effect for that it is an attempt to deprive complainant of its property without due process of law, and denies to complainant the equal protection of the law for reasons additional to those heretofore given, in that:

(*a*) Harsh and unreasonable penalties are provided with no provision for a test of the validity of the act, except at the risk of incurring such penalties which, if applied to each shipment of state freight or each passenger traveling on a state journey, over complainant's line, would within two years be greater than the value of complainant's whole property devoted to such use.

(*b*) It directly influences, affects and bears upon interstate freight and passenger traffic and fixes and regulates the same, for these reasons additional to those heretofore given:

(1) Many of the companies operate lines between the large cities of the state, some of which are wholly within the state and some of which go out of the state into Kansas and then back into this state. For illustration: The Kansas City, Clinton & Springfield Railway Company and the St. Louis & San Francisco Railroad Company are trunk lines between Kansas City, Missouri, and Springfield, Missouri, of substantially the same length; the line of the former
126 between those points extending into and out of Kansas, so that all its carriage between said points is interstate; the other company has one line which in said course runs into and out of a portion of Kansas, and another separate line between said points which extends wholly through Missouri so that the carriage between said points upon one line is interstate and upon the other, state. Between Joplin and Kansas City there are three trunk lines of substantially the same length, that of the Missouri Pacific Railway Company between said points being wholly within the state and therefore all of its traffic is state, while the lines of the Kansas City Southern Railway Company and the St. Louis & San Francisco Railroad Company between said points extend into and out of Kansas, so that all the traffic between said points is interstate. Between St. Louis, Missouri, and St. Joseph, Missouri, there are two trunk lines, one of which is that of the Chicago, Burlington & Quincy Railway Company, which does not pass out of the state, so that the traffic between said points upon that line is wholly state, the other line is that of the Missouri Pacific Railway Company which in its course passes into

and out of Kansas, so that the entire traffic between said points is interstate. Between Kansas City, Missouri, and St. Joseph, Missouri, there are four trunk lines of substantially equal length, those of the Chicago, Burlington & Quincy Railway Company and the St. Joseph & Grand Island Railway Company are wholly within Missouri and all their traffic between said points is state; the lines of the Missouri Pacific Railway Company and of the Chicago Great Western Railway Company pass into and out of Kansas, so that the entire traffic thereon between said points is wholly interstate.

The said five cities are the largest in the state, their populations, according to the census of 1900 being, St. Louis 575,238; Kansas City, 163,752; St. Joseph, 102,979; Joplin, 26,023; Springfield, 23,267.

The traffic between said cities upon said lines is a very substantial part of the traffic of said lines and of the state;
127 the rates between the points as aforesaid, both for passenger and freight, upon those lines which are interstate, have been for years fixed at a reasonable sum which is much higher than the rates fixed by any of the acts of the legislature in question. If any of the rates mentioned in said acts be put in force between said points upon lines wholly within the state, each of the companies operating the lines which are interstate will necessarily be compelled to lower their rates to the same figure or else, as a matter of fact, none of the traffic between said points will be carried over its line.

(3) The large cities and populous communities of the state are upon its eastern and western borders; the main course of traffic through the state is east and west; all the railroads in the state either operate lines extending into other states, or into the state of Kansas adjoining Missouri upon the west, and Illinois adjoining it upon the east, or else have joint freight and passenger traffic arrangements with lines running into those states for interstate through carriage both of freight and passengers.

So far, pending the test of the passenger rate ordered by this court, it has been demonstrated and is the fact, that the interstate passenger rates are much higher than those fixed by the passenger act of 1907, so that passengers starting from points in Missouri to go to other states buy tickets at two cents a mile to the last station in Missouri upon its border, and then buy tickets or pay fare from thence to their interstate destination, and vice versa from points of interstate trip into Missouri. For illustration a concrete case may be stated. From St. Louis to Kansas City is about 275 miles, thence to Topeka, Kansas, 67 miles, or a total of about 342 miles. The fair and reasonable interstate rate is and has for years been $9.50. A passenger starting from St. Louis may and does, buy his ticket to Kansas City, 275 miles at two cents a mile, or $5.50; he then buys his ticket to Topeka, 67 miles, at three cents a mile or $2.00, making a total from St. Louis to Topeka of $7.50, thus saving to himself and losing to the
128 carrier the difference between $9.50 and $7.50, or $2.00. This illustrates the situation upon other lines in the state, so that as a matter of fact it is true that in a state located as the state of Missouri is, the lowering of the rate upon the state traffic below that of the interstate necessarily affects, fixes and lowers the interstate rate

in the manner herein stated. The same thing is true of the freight traffic (though not in this respect in as pointed a degree), because the same practice can, is and will be adopted as to freight.

Wherefore, complainant prays, as heretofore prayed, and asks that the defendants be required to also answer this amendment, but an answer under oath is waived, and in addition to the relief heretofore asked, complainant asks that Herbert S. Hadley, Attorney General of the State of Missouri, be temporarily and permanently enjoined from prosecuting the said suit in the state court which he has instituted against the complainant.

And your orator will ever pray, etc.

WELLS H. BLODGETT AND
JAS. L. MINNIS,
Solicitors for Complainant.

FRANK HAGERMAN,
Of Counsel.

STATE OF MISSOURI,
City of St. Louis, ss:

I, E. B. Pryor upon oath say that I am Vice-President of complainant in the above entitled cause, and as such am familiar with the traffic questions of said company, and all the matters and things mentioned in said amendment which I have read; I know the contents thereof and the same are true of my own knowledge, except as to those stated upon information and belief, and as to those matters, I believe them to be true.

EDWARD B. PRYOR.

Subscribed and sworn to before me this 2nd day of July, 1907.
My commission expires June 16, 1911.

[SEAL.] HANNAH BADGELEY,
Notary Public.

129 Afterwards, to-wit, on the 16th day of July, 1907, an Acknowledgment of Service of Subpœna was filed. Said Acknowledgment of Service of Subpœna is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 3000.

WABASH RAILROAD COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendants.

Acknowledgment of Service of Subpœna.

Service of the subpœna issued herein upon June 25, 1907, is acknowledged with the same force and effect and no more than if served by the proper officer.

HERBERT S. HADLEY,
Attorney General,
Solicitor for Railroad Commissioners, Including H. R. Oglesby, Herbert S. Hadley, Attorney General, and Joseph Sanderson, J. S. Peppard, and Sidney Smith.

130 Afterwards, to-wit, on the 16th day of July, 1907, an Acknowledgment of Service of Subpœna was filed. Said Acknowledgment of Service of subpœna is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 3000.

WABASH RAILROAD COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendants.

Acknowledgment of Service of Subpœna.

Service of the subpœna issued herein upon June 25, 1907, is acknowledged with the same force and effect and no more than if served by the proper officer.

JULIUS H. LANG.
CHARLES A. KIRTLEY.

131 Afterwards, to-wit, on the 31st day of July, 1907, an Acknowledgment of Service of Subpœna was filed. Said Acknowledgment of Service of subpœna is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 3000.

WABASH RAILROAD COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendants.

Acknowledgment of Service of Subpœna.

Service of the subpœna issued herein upon June 25, 1907, is acknowledged with the same force and effect and no more than if served by the proper officer.

CHARLES W. GERMAN,
County Counselor;
Solicitors for Joseph M. Patterson, Charles E. Moss and George Dodd, County Judges of Jackson Co., Mo., and Arthur C. Warner, County Treasurer, Jackson County, Mo.

132 Afterwards, to-wit, on the 2nd day of August, A. D. 1907, the joint demurrer of John A. Knott, et al., was filed. Said demurrer is in words & figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 3000.

THE WABASH RAILWAY COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendants.

The Joint Demurrers of the Above-named Defendants, John A. Knott, Frank Wightman and H. R. Oglesby, Railroad Commissioners of the State of Missouri, to the Amended and Supplemental Bill of Complaint as Amended.

First. These defendants, by protestation, not confessing or acknowledging all or any of the matters and things in the complainant's amended and supplemental bill of complaint as amended to be true in manner and form as the same are therein and thereby set forth and alleged, doth demur thereto and for cause of demurrer show:

1. That the said complainant has not, in and by said amended and supplemental bill of complaint, as amended, made or stated any such

cause as ought to entitle it to the relief thereby sought and prayed for, from or against these defendants, or to any relief whatsoever.

2. It appears upon the face of complainant's amended and supplemental bill of complaint as amended that the complainant has an adequate remedy at law.

3. The matters and things set forth in complainant's amended and supplemental bill of complaint, as amended, are not nor are any of them germane to or supplementary of the original bill in this case.

133 4. If the matters and things set forth in complainant's amended and supplemental bill of complaint, as amended, entitle the complainant to any relief whatsoever, they constitute a new, original and independent cause of action, not connected with or dependent upon the cause of action set forth in the original bill.

Second. These defendants further demur to the fifth, sixth, seventh and eighth paragraphs of the complainant's amended and supplemental bill of complaint, as amended, because (*a*) the same are not germane to or supplementary of the original bill herein; (*b*) if the matters and things set forth in said paragraphs entitle the complainant to any relief whatsoever, they constitute a new, original and independent cause of action not connected with or dependent upon the cause of action set forth in the original bill; (*c*) the matters and things set forth in said paragraphs do not entitle complainant to the relief prayed for, or to any relief whatsoever.

Third. These defendants further demur to the ninth and tenth paragraphs of the complainant's amended and supplemental bill of complaint, as amended, because (*a*) the matters and things set forth in said paragraphs are not germane to or supplementary of the original bill herein; (*b*) if the matters and things set forth in said paragraphs entitle the complainant to any relief whatsoever, they constitute a new, original and independent cause of action not connected with or dependent upon the cause of action set forth in the original bill; (*c*) the matters and things set forth in said paragraphs do not entitle the complainant to the relief prayed for, or to any relief whatsoever.

Fourth. These defendants further demur to the eleventh and twelfth paragraphs of the complainant's amended and supplemental bill of complaint, as amended, because (*a*) the matters and things set forth in said paragraphs are not germane to or supplementary of the original bill herein; (*b*) if the matters and things set forth in

134 said paragraphs entitle the complainant to any relief whatsoever, they constitute a new, original and independent cause of action, not connected with or dependent upon the cause of action set forth in the original bill; (*c*) the matters and things set forth in said paragraphs do not entitle the complain-t to the relief prayed for, or to any relief whatsoever.

Fifth. These defendants further demur to the fourteenth, fifteenth, sixteenth, seventeenth, eighteenth and nineteenth paragraphs of the complainant's amended and supplemental bill of complaint, as amended, because (*a*) the matters and things set forth in said paragraphs are not germane to or supplementary of the original bill

herein; (*b*) if the matters and things set forth in said paragraphs entitle the complainant to any relief whatsoever, they constitute a new, original and independent cause of action, not connected with or dependent upon the cause of action set forth in the original bill; (*c*) the matters and things set forth in said paragraphs do not entitle the complainant to the relief prayed for or to any relief whatever; (*d*) it appears from said paragraphs that the State Circuit Court of Kansas City, Missouri, has jurisdiction of the suit against the complainant pending therein and mentioned in said paragraphs; (*e*) the State of Missouri had a lawful right to institute said suit in said State court, and said State court had a lawful right to entertain jurisdiction of the same; (*f*) the said Attorney General had a lawful right and the authority to institute the suit referred to in said paragraphs against the complainant, in the State Circuit Court at Kansas City, Missouri, and he has the lawful right and authority to proceed with and prosecute the same to a conclusion; (*g*) if the complainant is aggrieved by the suit against it in the State Circuit Court mentioned in said paragraphs, it has an adequate remedy by making its defense (if any it have) to the same, in said State court.

Sixth. These defendants further demur to the twentieth paragraph of complainant's amended and supplemental bill of complaint, as amended, because (*a*) the matters and things set forth in
135 said paragraph are not germane to or supplementary of the original bill herein; (*b*) if the matters and things set forth in said paragraph entitle the complainant to any relief whatsoever, they constitute a new, original and independent cause of action, not connected with or dependent upon the cause of action set forth in the original bill; (*c*) the matters and things set forth in said paragraph do not entitle the complainant to the relief prayed for or to any relief whatsoever; (*d*) it appears from said paragraph that the Circuit Court of Jackson County, Missouri, and the Circuit Court at St. Louis, Missouri, have jurisdiction, respectively, of the suits against the complainant and other railway companies mentioned in said paragraph; (*e*) the State of Missouri had a lawful right to institute the suits mentioned in said paragraph, and said State courts had a lawful right to entertain jurisdiction of the same; (*f*) the said Attorney General had a lawful right and the authority to institute in said State Circuit Courts the suits against the complainant and the other railway companies mentioned in said twentieth paragraph, and he has the lawful right and authority to proceed with and prosecute the same to a conclusion; (*g*) if the complainant or any of said other railway companies are aggrieved by the suits in said State Circuit Courts mentioned in said twentieth paragraph, they have an adequate remedy by making their defense (if any they have) to the same, in said State courts.

Seventh. These defendants further demur to the twenty-first paragraph of complainant's amended and supplemental bill of complaint, as amended, because (*a*) the matters and things set forth in said paragraph are not germane to or supplementary of the original bill herein; (*b*) if the matters and things set forth in said paragraph entitle the complainant to any relief whatsoever, they constitute a

new, original and independent cause of action, not connected with or dependent upon the cause of action set forth in the original bill; (c) the matters and things set forth in said paragraph do not entitle the complainant to the relief prayed for or to any relief whatever.

Wherefore, and for divers other good causes of demurrer
136 appearing in complainant's amended and supplemental bill of complaint, as amended, and in the paragraphs thereof specifically mentioned in the foregoing demurrers, numbered second, third, fourth, fifth, sixth and seventh, respectively, these defendants demur thereto and humbly demand the judgment of this court whether they shall be compelled to make any further or other answer to said amended and supplemental bill of complaint as amended, or to the said paragraphs hereinbefore specifically mentioned, or any of them, and pray to be hence dismissed with their costs and charges in this behalf most wrongfully sustained.

HERBERT S. HADLEY,
Attorney General;
JOHN KENNISH,
FREDERICK W. LEHMANN,
SANFORD B. LADD,
Solicitors for Defendants.

FREDERICK W. LEHMANN,
SANFORD B. LADD,
Of Counsel.

I hereby certify that the foregoing demurrers are, in my opinion, well founded in point of law.

SANFORD B. LADD,
Of Counsel for Defendants.

The affidavit required by Equity Rule 31 is hereby expressly waived.

FRANK HAGERMAN,
Counsel for Complainant.

137 Afterwards, to wit, on the 2nd day of August, A. D. 1907, the demurrer of Herbert S. Hadley, Attorney General, was filed.

Said demurrer is in words & figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 3000.

THE WABASH RAILWAY COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendants.

The Demurrers of the Above-named Defendant, Herbert S. Hadley, Attorney General, to the Amended and Supplemental Bill of Complaint as Amended.

First. This defendant, by protestation, not confessing or acknowledging all or any of the matters and things in the complainant's amended and supplemental bill of complaint as amended to be true in manner and form as the same are therein and thereby set forth and alleged, doth demur thereto and for cause of demurrer showeth:

1. That the said complainant has not, in and by said amended and supplemental bill of complaint, as amended, made or stated any such cause as doth or ought to entitle it to the relief thereby sought and prayed for, from or against this defendant, or to any relief whatsoever.

2. It appears upon the face of complainant's amended and supplemental bill of complaint as amended that the complainant has an adequate remedy at law.

3. The matters and things set forth in complainant's amended and supplemental bill of complaint, as amended, are not nor are any of them germane to or supplementary of the original bill in this case.

138 4. If the matters and things set forth in complainant's amended and supplemental bill of complaint, as amended, entitle the complainant to any relief whatsoever, they constitute a new, original and independent cause of action, not connected with or dependent upon the cause of action set forth in the original bill.

Second. This defendant further demurs to the fifth, sixth, seventh and eighth paragraphs of the complainant's amended and supplemental bill of complaint, as amended, because (*a*) the same are not germane to or supplementary of the original bill herein; (*b*) if the matters and things set forth in said paragraphs entitle the complainant to any relief whatsoever, they constitute a new, original and independent cause of action not connected with or dependent upon the cause of action set forth in the original bill; (*c*) the matters and things set forth in said paragraphs do not entitle complainant to the relief prayed for, or to any relief whatsoever.

Third. This defendant further demurs to the ninth and tenth paragraphs of the complainant's amended and supplemental bill of complaint, as amended, because (*a*) the matters and things set forth in said paragraphs are not germane to or supplementary of the

original bill herein; (*b*) if the matters and things set forth in said paragraphs entitle the complainant to any relief whatsoever, they constitute a new, original and independent cause of action not connected with or dependent upon the cause of action set forth in the original bill; (*c*) the matters and things set forth in said paragraphs do not entitle the complainant to the relief prayed for, or to any relief whatsoever.

Fourth. This defendant further demurs to the eleventh and twelfth paragraphs of the complainant's amended and supplemental bill of complaint, as amended, because (*a*) the matters and things set forth in said paragraphs are not germane to or supplementary of the original bill herein; (*b*) if the matters and things set
139 forth in said paragraphs entitle the complainant to any relief whatsoever, they constitute a new, original and independent cause of action, not connected with or dependent upon the cause of action set forth in the original bill; (*c*) the matters and things set forth in said paragraphs do not entitle the complain-t to the relief prayed for, or to any relief whatsoever.

Fifth. This defendant further demurs to the fourteenth, fifteenth, sixteenth, seventeenth, eighteenth and nineteenth paragraphs of the complainant's amended and supplemental bill of complaint, as amended, because (*a*) the matters and things set forth in said paragraphs are not germane to or supplementary of the original bill herein; (*b*) if the matters and things set forth in said paragraphs entitle the complainant to any relief whatsoever, they constitute a new, original and independent cause of action, not connected with or dependent upon the cause of action set forth in the original bill; (*c*) the matters and things set forth in said paragraphs do not entitle the complainant to the relief prayed for or to any relief whatever; (*d*) it appears from said paragraphs that the State Circuit Court of Kansas City, Missouri, has jurisdiction of the suit against the complainant pending therein and mentioned in said paragraphs; (*e*) the State of Missouri had a lawful right to institute said suit in said State court, and said State court had a lawful right to entertain jurisdiction of the same; (*f*) the said Attorney General had a lawful right and the authority to institute the suit referred to in said paragraphs against the complainant, in the State Circuit Court at Kansas City, Missouri, and he has the lawful right and authority to proceed with and prosecute the same to a conclusion; (*g*) if the complainant is aggrieved by the suit against it in the State Circuit Court mentioned in said paragraphs, it has an adequate remedy by making its defense (if any it have) to the same, in said State court.

Sixth. This defendant further demurs to the twentieth paragraph of complainant's amended and supplemental bill of complaint, as amended, because (*a*) the matters and things set forth in
140 said paragraphs are not germane to or supplementary of the original bill herein: (*b*) if the matters and things set forth in said paragraph entitle the complainant to any relief whatsoever, they constitute a new, original and independent cause of action, not connected with or dependent upon the cause of action set forth in the original bill; (*c*) the matters and things set forth in said para-

graph do not entitle the complainant to the relief prayed for or to any relief whatsoever; (*d*) it appears from said paragraph that the Circuit Court of Jackson County, Missouri, and the Circuit Court at St. Louis, Missouri, have jurisdiction, respectively, of the suits against the complainant and other railway companies mentioned in said paragraph; (*e*) the State of Missouri had a lawful right to institute the suits mentioned in said paragraph, and said State courts had a lawful right to entertain jurisdiction of the same; (*f*) the said Attorney General had a lawful right and the authority to institute in said State Circuit Courts the suits against the complainant and the other railway companies mentioned in said twentieth paragraph, and he has the lawful right and authority to proceed with and prosecute the same to a conclusion; (*g*) if the complainant or any of said other railway companies are aggrieved by the suits in said State Circuit Courts mentioned in said twentieth paragraph, they have an adequate remedy by making their defense (if any they have) to the same, in said State courts.

Seventh. This defendant further demurs to the twenty-first paragraph of complainant's amended and supplemental bill of complaint, as amended, because (*a*) the matters and things set forth in said paragraph are not germane to or supplementary of the original bill herein; (*b*) if the matters and things set forth in said paragraph entitle the complainant to any relief whatsoever, they constitute a new, original and independent cause of action, not connected with or dependent upon the cause of action set forth in the original bill; (*c*) the matters and things set forth in said paragraph do not entitle the complainant to the relief prayed for or to any relief whatever.

Wherefore, and for divers other good causes of demurrer
141 appearing in complainant's amended and supplemental bill of complaint, as amended, and in the paragraphs thereof specifically mentioned in the foregoing demurrers, numbered second, third, fourth, fifth, sixth and seventh, respectively, this defendant demurs thereto and humbly demands the judgment of this court whether he shall be compelled to make any further or other answer to said amended and supplemental bill of complaint as amended, or to the said paragraphs hereinbefore specifically mentioned, or any of them, and prays to be hence dismissed with his costs and charges in this behalf most wrongfully sustained.

HERBERT S. HADLEY,
Attorney General;
JOHN KENNISH,
FREDERICK W. LEHMANN,
SANFORD B. LADD,
Solicitors for Defendant.

FREDERICK W. LEHMANN,
SANFORD B. LADD,
Of Counsel.

I hereby certify that the foregoing demurrers are, in my opinion, well founded in point of law.

SANFORD B. LADD,
Of Counsel for Defendant.

The affidavit required by Equity Rule 31 is hereby expressly waived.

FRANK HAGERMAN,
Counsel for Complainant.

142 Afterwards, to wit, on the 2nd day of August, A. D. 1907, the joint and several demurrer of Joseph M. Patterson et al. was filed.

Said demurrer is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 3000.

THE WABASH RAILWAY COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendants.

The Joint and Several Demurrer of Joseph M. Patterson, Charles E. Moss, and George Dodd, Judges of the County Court of Jackson County, Missouri, and Arthur C. Warner, Treasurer of said County, Four of the Defendants Herein, to Complainant's Original Bill of Complaint, its Amended and Supplemental Bill, and the Amendment to said Bill of Complaint.

These defendants, by protestation, not confessing all or any of the matters and things in complainant's original bill of complaint, its amended and supplemental bill, and the amendment to said bill of complaint to be true in such manner and form as the same are therein set forth and alleged, demur thereto, and for cause of demurrer show that the said complainant has not in and by said original bill of complaint, its amended and supplemental bill, and the amendment to said bill of complaint, made or stated any such cause as doth or ought to entitle it to the relief thereby sought and prayed for from or against these defendants or either of them.

143 Wherefore, and for divers other good causes of demurrer appearing in said original bill of complaint, the said amended and supplemental bill, and the said amendment to the bill of complaint, these defendants respectively demur thereto and humbly demand the judgment of this court whether they shall be compelled to make any further or other answer to the said original bill of complaint, the said amended and supplemental bill, and the amendment

to the bill of complaint, and pray to be hence dismissed with their costs and charges in this behalf most wrongfully sustained.

HERBERT S. HADLEY,
Attorney General;
JOHN KENNISH,
FREDERICK W. LEHMANN,
SANFORD B. LADD,
Solicitors for Defendants.

FREDERICK W. LEHMANN,
SANFORD B. LADD,
Of Counsel.

I hereby certify that in my opinion the foregoing demurrer is well founded in point of law.

SANFORD B. LADD,
Of Counsel for Defendants.

The affidavit required by Equity Rule 31 is hereby expressly waived.

FRANK HAGERMAN,
Counsel for Complainant.

144 Afterwards, to-wit, on the 2nd day of August, 1907, the demurrer of Joseph Sanderson, et al., to the Amended & Supplemental Bill of Complaint as amended, was filed. Said demurrer is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 3000.

THE WABASH RAILWAY COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendants.

The Joint and Several Demurrer of Joseph Sanderson, J. S. Peppard, and Sidney Smith, Three of the Defendants Herein, to Complainant's Amended and Supplemental Bill of Complaint, as Amended.

These defendants, by protestation, not confessing or acknowledging all or any of the matters and things in the complainant's amended and supplemental bill of complaint, as amended, to be true in manner and form as the same are therein and thereby set forth and alleged, do demur thereto and for cause of demurrer show:

First. That the said complainant has not, in and by said amended and supplemental bill of complaint, as amended, made or stated any such cause as ought to entitle it to the relief thereby sought and

prayed for from or against these defendants, or to any relief whatsoever.

Second. If the matters and things set forth in complainant's amended and supplemental bill of complaint, as amended, entitle the complainant to any relief whatsoever, they constitute a new, original and independent cause of action, not connected with or dependent upon the cause of action set forth in the original bill.

145 Wherefore, and for divers other good causes of demurrer appearing in complainant's amended and supplemental bill of complaint, as amended, these defendants demur thereto and humbly demand the judgment of this court whether they shall be compelled to make any further or other answer to said amended and supplemental bill of complaint, as amended, and pray to be hence dismissed with their costs and charges in this behalf most wrongfully sustained.

HERBERT S. HADLEY,
Attorney General;
JOHN KENNISH,
FREDERICK W. LEHMANN,
SANFORD B. LADD,
Solicitors for Defendants.

FREDERICK W. LEHMANN,
SANFORD B. LADD,
Of Counsel.

I hereby certify that the foregoing demurrer is, in my opinion, well founded in point of law.

SANFORD B. LADD,
Of Counsel for Defendants.

The affidavit required by Equity Rule 31 is hereby expressly waived.

FRANK HAGERMAN,
Counsel for Complainant.

146 Afterwards, to wit, on the 2nd day of August, A. D. 1907, the joint and several demurrer of Julius H. Lang et al. was filed. Said demurrer is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 3000.

THE WABASH RAILWAY COMPANY, Complainant,
vs.
HERBERT S HADLEY, Attorney General of the State of Missouri, et al., Defendants.

The Joint and Several Demurrer of Julius H. Lang and Charles A. Kirtley, Two of the Defendants Herein, to Complainant's Original Bill of Complaint, its Amended and Supplemental Bill and the Amendment to said Bill of Complaint.

These defendants, by protestation, not confessing all or any of the matters and things in complainant's original bill of complaint, its amended and supplemental bill, and the amendment to said bill of complaint to be true in such manner and form as the same are therein set forth and alleged, demur thereto, and for cause of demurrer show that the said complainant has not in and by said original bill of complaint, its amended and supplemental bill, and the amendment to said bill of complaint, made or stated any such cause as doth or ought to entitle it to the relief thereby sought and prayed for from or against these defendants or either of them.

147 Wherefore, and for divers other good causes of demurrer appearing in said original bill of complaint, the said amended and supplemental bill, and the said amendment to said bill of complaint, these defendants respectively demur thereto and humbly demand the judgment of this court whether they shall be compelled to make any further or other answer to the said original bill of complaint, the said amended and supplemental bill, and the amendment to the bill of complaint, and pray to be hence dismissed with their costs and charges in this behalf most wrongfully sustained.

HERBERT S. HADLEY,
Attorney General;
JOHN KENNISH,
FREDERICK W. LEHMANN,
SANFORD B. LADD,
Solicitors for Defendants.

FREDERICK W. LEHMANN,
SANFORD B. LADD,
Of Counsel.

I hereby certify that in my opinion the foregoing demurrer is well founded in point of law.

SANFORD B. LADD,
Of Counsel for Defendants.

The affidavit required by Equity Rule 31 is hereby expressly waived.

FRANK HAGERMAN,
Counsel for Complainant.

148 Afterwards, to-wit, on the 24th day of September, 1907, an Interlocutory Report of Special Master was filed.

And afterwards, to-wit, on the 7th day of October, 1907, said Interlocutory Report of Special Master and the Order thereon, *was* refiled.

Said Interlocutory Report and the Order thereon *is* in words and figures as follows:

Circuit Court of the United States, Western Division of the Western District of Missouri.

MISSOURI PACIFIC RAILWAY COMPANY
vs.
HERBERT S. HADLEY, Attorney General, et al.

CHICAGO, BURLINGTON & QUINCY RAILWAY CO.
vs.
HERBERT S. HADLEY, Attorney General, et al.

WABASH RAILROAD COMPANY
vs.
HERBERT S. HADLEY, Attorney General, et al.

Interlocutory Report of Special Master.

To the Honorable the Judges of said Court:

By reason of the premises hereinafter recited the undersigned Special Master to whom the above entitled and fifteen other like causes were referred by order of this Court bearing date March 5th, 1906, begs leave to present this special interlocutory report.

Having completed the taking of the evidence offered by the respective parties complainants and defendants in the three cases above named, these having been duly selected out of the eighteen for hearing in the first instance in pursuance of the order of reference, the same were set down for argument before the Master on June 18th, 1907. On said date, however, the complainants in all the cases, having immediately prior thereto filed their amended and supplemental bills in this Court, further proceedings before the Master were, by consent of all parties, suspended subject to

149 be resumed on due notice.

As appears in said amended and supplemental bills and the several amendments thereof since filed, copies of all whereof have been duly received by the Master, there have been brought into

these cases various new and additional matters not embraced in the issues so referred.

And being in doubt as to whether the filing of such amended and supplemental bills do of necessity or should, pending proceedings in Court thereon, operate as a stay of further proceedings before him and of his report upon the matters and issues so referred, the Special Master therefore submits this Interlocutory Report and respectfully prays for such further orders and directions in the premises as to the Court may seem meet.

F. L. SCHOFIELD,
Special Master.

The amendments pending the hearing of the original bills of complaint had the effect, in law, of uniting the matters complained of in one bill. They, therefore, constitute but one bill of complaint, and all matters involved should be fully heard and the Master's findings should be embraced in a single report.

(Signed) JNO. F. PHILIPS, *Judge.*

October 7th, 1907.

150 Afterwards, to-wit, on the 13th day of November, 1907, the following order was filed and entered of record, to-wit:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD CO., Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendants.

Also

In Equity.

RAILROAD COMPANIES
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2998, 2999, 3000, 3001, 3002, 3003, 3004, and 3006.

Order.

This cause coming on for hearing this November 13, 1907, it is by consent of parties ordered that leave of court be and is hereby granted to amend complainant's "Amendment to complain-t's bill

of complaint," by erasing and striking out of paragraph 15 thereof the words "between 12 and 1 o'clock A. M." in lines 27 and 28 on page 2, and the words "at the said hours of" in lines 1 and 2 on page 3, and complainant's counsel are directed to forthwith make such erasure.

(Signed) SMITH McPHERSON, *Judge.*

151 Afterwards, to-wit, on the 10th day of April, 1908, the following order was filed and entered of record, to-wit:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 3000.

WABASH RAILROAD COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General, et al., Defendants.

Order.

This cause came on for hearing this 10th day of April, 1908, upon the demurrers herein filed. The parties appeared by their respective counsel, and the court, after argument, being fully advised in the premises, overrules said demurrers.

(Signed) SMITH McPHERSON, *Judge.*

152 Afterwards, to wit, on the 12th day of May, A. D. 1908, the joint answer of John A. Knott et al., was filed.

Said answer is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. —.

THE WABASH RAILROAD COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendants.

The Joint Answer of the Defendants, John A. Knott, Frank Wightman and H. R. Oglesby, Railroad Commissioners of the State of Missouri, to the Complainant's Amended and Supplemental Bill and the Amendment Thereto.

These defendants now, and at all times hereafter, saving to themselves all and all manner of benefit or advantage of exception, or otherwise, that can or may be had or taken to the many errors and

imperfections in said Amended and Supplemental Bill of complaint, as amended, for answer thereto, or to so much thereof as they are advised is material or necessary to make answer to, answering say:

That they do hereby adopt as their Answer herein the answer of Herbert S. Hadley, Attorney-General of the State of Missouri, and all and singular the statements and averments thereof as fully as if the same were repeated herein, and they ask that the said Answer be taken in all respects as the Answer of them and of each of them.

These defendants deny that the complainant is entitled to any relief whatever against these defendants, without this, that
153 any other matter, cause or thing in the complainant's amended and supplemental bill and the amendments thereto, contained, material or necessary for these defendants to make answer unto, and not herein or hereby well and sufficiently answered, confessed, traversed and avoided or denied, is true to the knowledge or belief of these defendants, or any of them; to each of which matters and things these defendants are ready and willing to aver, maintain and prove, as this Honorable Court shall direct, and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

HERBERT S. HADLEY,
Attorney-General;
JOHN KENNISH,
Ass't Attorney-General,
Solicitors for Defendants.

SANFORD B. LADD,
F. W. LEHMANN,
Of Counsel.

Received copy of the above and foregoing Answer May 4, 1908.

J. L. MINNIS,
FRANK HAGERMAN,
Solicitors for Complainant.

154 Afterwards, to-wit, on the 12th day of May, A. D. 1908, the answer of Herbert S. Hadley, Attorney General, was filed. Said answer is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 3000.

THE WABASH RAILROAD COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendants.

Answer of Herbert S. Hadley, Attorney-General of the State of Missouri, to the Complainant's Amended and Supplemental Bill and the Amendment Thereto.

This defendant now, and at all times hereafter, saving to himself all and all manner of benefit, or advantage of exception, or otherwise, that can or may be had or taken to the many errors and imperfections in said Amended and Supplemental Bill of complaint, as amended, for answer thereto, or to so much thereof as he is advised is material or necessary to make answer to, answering says:

This defendant admits Paragraphs 1, 2, 3 and 4 of the Amended and Supplemental Bill.

This defendant denies that the Governor of the State, in giving his written reasons for approving the Act of 1905, referred to or indicated that it was with some reluctance that he signed the same.

And this defendant denies that any acknowledgment was made of the invalidity of the Act of 1905, referred to in Paragraphs 5 and 6 of the Amended and Supplemental Bill; but he admits that the Legislature of the State of Missouri did pass an act, effective June 14, 1907, in words and figures as set forth in Paragraph 6 of said Amended and Supplemental Bill.

But this defendant denies that it was the purpose or the intention of the defendant herein to attempt to enforce all penalties which may accrue if the said acts are held to be illegal.

This defendant admits that the Legislature of Missouri in 1907 passed the two acts set forth in Paragraph 7 of said Amended and Supplemental Bill.

And this defendant denies that if the complainants should charge the maximum rates prescribed by the acts of the General Assembly of the State of Missouri enacted at its session in 1907, the total gross receipts of the complainant from State traffic would be re-
155 duced in a very large sum, and denies that the said freight acts, or any of them, are violative of the provisions of the Constitution to the same extent as complainant has alleged with respect to the Act of 1905, or to any extent whatever.

And this defendant denies that the rates fixed by the Acts of 1907 are unreasonable and confiscatory, and less than the cost of the service.

And this defendant denies that the Governor of the State of Missouri in calling for the passage of said Act of 1907, and the Legisla-

ture in passing the same, did so for the avowed purpose of increasing certain of the maximum rates of the Act of 1905, which they conceived had in this litigation been proved to be unreasonable and confiscatory, and could not be enforced.

And this defendant denies that the rates as finally fixed by the Acts of 1907 were not on such a basis as would return a reasonable and fair compensation to the complainant upon the value of that portion of its property devoted to such use.

And this defendant denies that if the laws in existence in 1905, relative to passenger fares, had remained in force, the freight rates, as fixed by said Acts of 1907, would be unreasonable or confiscatory, or that they would not give a just return upon the value of that portion of complainant's property devoted to said traffic.

This defendant denies that the Legislature of the State acted without any fixed or definite knowledge upon the subject of rates, or that they erroneously conceived that if the increase in freight rates were necessary and were made, there could be a general equalization of rates by a decrease in the passenger rates, and that thereby, in substance, they could legally overcome and offset any advantage from an increase in freight rates by decreasing the maximum rates to be charged for said passenger traffic about 33⅓ per cent, and thus while defeating pending litigation, the public, as a whole, would not be the loser.

This defendant denies that the result was that as part and parcel of one transaction and substantially as one law, and to accomplish the purposes alleged in the Amended and Supplemental Bill, there was passed, and the Governor approved, an act called the "Passenger Act," taking effect on June 14, 1907; but this defendant admits that the act relative to passenger rates, in words and figures as set forth in said Paragraph 9 of the Amended and Supplemental Bill, was enacted by the Legislature of the State of Missouri.

And this defendant denies that the said act regulating passenger rates is violative of any provision of the Constitution of the State of Missouri, or of the United States, and denies that it is subject to any of the objections made in the original bill to the Act of 1905, and denies that any of the facts alleged in the original bill as to why the Act of 1905 should be held to be void and action thereunder restrained, are true as to the Acts of 1907, or of the said passenger act.

This defendant denies that the said Passenger Act will reduce the earnings of the complainant from its passenger business in the practical and ordinary operation of the road, or otherwise, substantially one-third, or in any amount whatsoever.

The defendant has no knowledge or information or belief as to the aggregate amount of the State passenger earnings for the year 1906, and he denies that if the passenger act aforesaid had been applied thereto, State earnings would have been reduced in any sum whatever.

156 And this defendant denies that the value of that portion of complainant's property devoted to the carriage of State business, considered as a whole, or separately, as to the passenger business only, is such in any case that the reduction in rates by said Passenger

Act would fail to make a reasonable return on such valuation, and denies that it would cause such business to be done at an actual loss.

This defendant denies that the said Passenger Act was passed for the avowed purpose of reducing the State passenger rates of complainant so as to off-set and overcome the supposed increase of freight rates made under the Act of 1907, and denies that the attempt was made to frame each act so as to avoid the injunctive relief in this or in each action heretofore instituted by railroad companies operating lines in Missouri.

And this defendant denies that if the injunction be not granted herein, the complainant is without means of adequate and proper relief, or would be denied due process of law. And this defendant alleges the fact to be that in the suit instituted by the State of Missouri to require by mandamus or mandatory injunction the observance of the laws of the said State, every defense, which the complainant herein and defendant in said suit may have, could be presented and considered, and the State of Missouri is contemplating no suit of any kind which would in any manner embarrass the complainant in the assertion of any rights which it may have.

This defendant says that it is not true that the special duties de volving upon the members of the Board of Railroad Commissioners and the Attorney-General, as stated in the original bill, apply to the Acts of 1907, and the Passenger Act aforesaid.

And this defendant denies that it is necessary or proper that the county judges and county treasurers of the State of Missouri should be made parties to this litigation, or that any private person should be drawn in as defendant thereto.

This defendant denies that the rates fixed by each, or any of the said Acts of 1907, or by said Passenger Act, or that the rates fixed by all of said acts, as a whole, are unreasonable or confiscatory, or that they will force an unreasonable reduction or confiscation of complainant's entire revenue, or of any part thereof, or that the said acts, or any of them, are in violation of the provisions of the Fourteenth Article of Amendment of the Constitution of the United States, or of any other provision of said Constitution.

And this defendant denies that to enforce the rates fixed by any of said acts would necessarily affect the interstate rates upon the same commodities. And this defendant alleges the fact to be that for many years past the complainant has voluntarily carried passengers in the State of Missouri, whose travel was wholly within the State, at the rate of two cents per mile. It has also carried many persons, other than employés of their own or other railroad companies, without exacting any compensation whatsoever, and the great bulk of passenger transportation within the State has been for many years past conducted at approximately two cents per mile, and that the charge of three cents exacted by complainant of any persons was an unjust, excessive and discriminatory charge upon such persons.

Referring to Subdivision (*b*) of Paragraph 11 of complainant's Amended and Supplemental Bill, this defendant says that the real purpose of the original Bill herein was to determine whether that

portion of the property of complainant devoted to State
157 freight business, could, if the act of 1905 were enforced, receive such return upon its value as would be fair, reasonable and not confiscatory, and that upon the trial of the three cases heard by the Special Master such was the theory adopted by both parties, and the proofs were by both of them directed to that end. And this defendant avers that the only legitimate and proper inquiry in this suit is as to the questions of law and fact arising upon the issues made by the original Bill and the Answer thereto, as to the validity of the said Act of 1905, and the results of its operation, and whether the same, if enforced, would be confiscatory and unremunerative to the complainant. Defendant asserts that the purpose of the original Bill ought not to be, and cannot, without disregard of the established rule of procedure of the Court of Chancery, be changed and perverted, to the end that the effect of the freight rate Act, or the passenger rate Act of 1907, shall be considered in this litigation, and that the only question proper to be considered or determined by this court in this action is the consequences to the complainant of the enforcement of the said Act of 1905.

This defendant denies that on the 11th day of June, 1907, the complainant filed herein a written application for leave to file an Amended and Supplemental Bill, and he denies that upon the same day there was served upon the counsel for the defendants in the original Bill herein, and accepted by them, a written notice that a copy of the form of the said Amended and Supplemental Bill, reciting that application to file same and for a temporary injunction would be presented to this Court upon June 14, 1907, at the opening of said court at 10 a. m.

And he denies that two petitions in equity in the name and on behalf of the State of Missouri, referred to in Paragraph 15 of the said Amended and Supplemental Bill, as amended, were filed by him in disregard or in contempt of the jurisdiction of this Court; and he alleges the fact in that regard to be that on the said fourteenth day of June, A. D. 1907, and between the hours of 8 and 9 in the morning of the said day, he did, in the name and on behalf of the State of Missouri, by virtue of his office and authority as Attorney-General of the said State, file two petitions of the State of Missouri, the same being petitions in equity against the complainant herein, as defendant in the said suits, the one asking that the said complainant herein, defendant in the said suit, be required to comply with the maximum freight rates provided by the laws of the State of Missouri, enacted at the legislative session of the year 1907, and the other asking that the said complainant herein, defendant in the said suit, be required to comply with the passenger rates fixed by the laws of the State of Missouri, enacted at the legislative session of the year 1907, and the said petitions were filed in the Circuit Court of the State of Missouri in and for Jackson county, at Kansas City, the same being a court of the State of Missouri of competent and general jurisdiction, and the said petitions were filed, and the suits instituted thereby, were pending, and summons, according to the laws of the State of Missouri, issued upon the said petitions and served upon

the complainant herein, defendant therein, before the hour of 10 o'clock a. m. of said 14th day of June, 1907, and before any Amended or Supplemental Bill, or any amendment to the original Bill herein was filed by the complainant, or before any such amended or Supplemental Bill, or amendment to the original Bill was presented to this Court for consideration.

And this defendant alleges further that the said petition in equity so as aforesaid filed by him in the Circuit Court of Jackson county, relative to the freight rates, has been dismissed by him, and
158 is no longer pending, but that the said petition in equity, so as aforesaid filed by him in the Circuit Court of Jackson county, at Kansas City, relative to the passenger rates, is still pending and undetermined.

And this defendant admits that the said Circuit Court of Jackson county did on the said 14th day of June, A. D. 1907, issue its restraining order, returnable upon the 24th day of June, 1907, in the said suit in equity relative to the said passenger rates, requiring the complainant herein, and defendant therein, to comply with the law of the State of Missouri in that behalf.

This defendant admits that upon the 14th day of June, 1907, at 10 a. m., there *were* presented to this Court the application of complainant for leave to file its Amended and Supplemental Bill, and for a temporary injunction, and that a continuance of the hearing of said application for one day was granted by the said court, and that this Court, upon its own motion, made the orders stated and referred to in Paragraph 16 of the said Amended and Supplemental Bill, as amended.

This defendant admits that upon June 17, 1907, this Court made and entered the order set forth in Paragraph 17 of the said Amended and Supplemental Bill, as amended.

And this defendant further admits that subpœnas have been issued, as by the said order provided, and served upon this defendant.

This defendant admits that upon June 24, 1907, the said Circuit Court of Jackson county, upon the application of this defendant, entered an order dismissing the petition in equity of the State of Missouri theretofore filed by him relative to the freight rates prescribed by the laws of the State of Missouri, and that upon the same day, upon his application, the said court entered an order setting aside the restraining order previously issued by it in the suit in equity of the State of Missouri against this complainant, as defendant therein, relative to the passenger rates prescribed by the laws of the State of Missouri.

And this defendant avers that he made his application to set aside the said restraining order because this complainant had put into effect the passenger rates prescribed by the laws of the State of Missouri and was fully observing the same, and has continued so to do to the present time.

This defendant admits that he did not dismiss the said suit in equity, relative to the passenger rates, and has insisted that it should remain pending, and that it is his purpose to proceed therewith, if the complainant herein, defendant in the said suit, shall, at any time

hereafter, cease to comply with the laws of the State of Missouri relative to passenger rates in said State.

And this defendant denies that the said State court has no jurisdiction in the premises, or that it has no right or power to compel complainant herein and defendant in the said suit, to put in force the passenger rates referred to, and he denies that any action by the said court would deny to complainant the protection accorded to it by the Fourteenth Amendment to the Constitution of the United States, and he alleges the fact in that regard to be that the said Circuit Court of Jackson county is a court of competent and general jurisdiction, having jurisdiction alike of the person of the complainant herein, defendant in the suit pending in the said Circuit Court of Jackson county, and that due process of law can and will be had by the complainant herein, defendant in the said suit, in the said suit, and any defense that it may have to the said suit in equity, so as aforesaid brought by the State of Mis-
159 souri in said Circuit Court of Jackson county, can and will be fully and fairly heard by said Circuit Court of Jackson county, and any rights which the complainant herein, defendant in the said suit, in said State court may have, will be fully conserved and protected.

This defendant denies that the facts alleged in Paragraphs 13 to 18, inclusive, of the Amended and Supplemental Bill, as amended, are true as to each or any of the several railroad companies named in Paragraph 20 of the said Amended and Supplemental Bill, as amended, except as they correspond with the admissions and averments hereinbefore set forth in this Answer.

This defendant admits that each of said companies had filed original bills in this Court similar to the original bill filed by the complainant herein.

This defendant also admits that the suits in equity brought by the State of Missouri were brought against the several railroad companies named in said Paragraph 20 either in the Circuit Court of Jackson county, or in the Circuit Court of the City of St. Louis, as in said paragraph stated.

And this defendant admits that it is his purpose to prosecute the said suits in equity, so brought by the State of Missouri in its said courts, in relation to the passenger rates, in the event that the said companies, defendants in said suits, shall fail to continue in observance of the passenger rates prescribed by the laws of the State of Missouri.

And this defendant denies that as to any of the complainants in the suits pending in the Circuit Court of the United States, defendants to the suits brought by the State of Missouri, restraining orders from the said State courts were served in the court room of this Court while the said parties, or any of them, were presenting applications to this Court upon June 14, 1907, but, on the contrary, this defendant alleges the fact to be in that regard that the said restraining orders were all served upon the proper officers of the said companies at their respective offices.

And this defendant denies that the said passenger Act of 1907, and that each or any of the freight acts of the State of Missouri of

1907, is void and of no effect, for the reason that it is an attempt to deprive complainant of its property without due process of law, or denies the complainant the equal protection of the law, and he alleges the fact in that regard to be that the said passenger act of 1907 is a reasonable and proper regulation of passenger rates in the State of Missouri, and that each of said freight acts of 1907 is a reasonable and proper regulation of rates for the transportation of freight; and that the said rates so prescribed by the said several acts of the General Assembly of the State of Missouri, and each of them, prescribe fair, proper and remunerative rates for the service to which the said acts severally relate.

And this defendant denies that the penalties provided by the said acts for a violation of them are harsh and unreasonable, or that they could in anywise be made burdensome, except through a persistent and continued disregard of the law by the said complainant.

This defendant denies that the said acts, or any of them, influence, affect or bear upon interstate freight and passenger traffic, or that they, or any of them, fix and regulate interstate freight and passenger traffic.

As to whether the Kansas City, Clinton & Springfield Railway Company, and the St. Louis & San Francisco Railroad Company, between Kansas City and Springfield, are of substantially the same length, or as to whether the line of the former between those
160 points extending into and out of Kansas, or whether all its carriage between said points is interstate, or whether the other company has one line which in its course runs into and out of a portion of Kansas, and another separate line between said points which extends wholly through Missouri, or whether the carriage between said points upon one line is interstate and upon the other state; or whether between Joplin and Kansas City there are three trunk lines of substantially the same length, some of which are within the State, and some of which are without the State, or whether all of the traffic on some of said lines between Joplin and Kansas City is State, and on other of said lines, between said points, is interstate; or whether between St. Louis and St. Joseph, Missouri, the line of the Chicago, Burlington & Quincy Railroad Company does not pass out of the State, or whether the traffic on said road between said points on said line is wholly State; or whether the line of the Missouri Pacific Railway Company between said St. Louis and St. Joseph in its course passes into and out of the state of Kansas, or whether the entire traffic upon said railway between said points is interstate; or whether between Kansas City and St. Joseph, Missouri, there are four trunk lines of substantially equal length, some of which are wholly within Missouri, and upon some of which all their traffic between said points is State, or whether the lines of some of them pass into and out of Kansas, or the entire traffic upon them, between said points, is wholly interstate, this defendant has no knowledge, information or belief.

This defendant admits that some of the large and populous communities of the State are upon its eastern and western borders. He admits that the main course of part of the traffic through the State is east and west. He has no knowledge, information or belief as to

whether all of the railroads in the State either operate lines extending into other states, or into the state of Kansas or Illinois, or whether any of them have joint freight and passenger traffic arrangements with lines running into those states, or interstate carriage for freight and passengers.

As to whether the interstate passenger rates are higher than those fixed by the passenger act of 1907, or whether passengers starting from points in Missouri to go to other states buy tickets at two cents a mile to the last station in Missouri upon its border, and then buy tickets or pay fare from thence to their interstate destination, and vice versa, this defendant has no knowledge, information or belief.

As to what the interstate rate from St. Louis to Topeka, Kansas, is, or has been, this defendant has no knowledge, information or belief; or as to whether a passenger starting from St. Louis for Topeka buys his tickets in the manner stated in the Amended and Supplemental Bill, as amended.

He denies that the lowering of the State rate for the transportation of passengers necessarily affects, fixes or lowers the interstate passenger rate, and he denies that the same is true of the freight traffic.

This defendant denies that the complainant is entitled to any relief whatever against this defendant, without this, that any other matter, cause or thing in the complainant's Amended and Supplemental Bill and the amendments thereto, contained, material or necessary for this defendant to make answer unto, and not herein or hereby well and sufficiently answered, confessed, traversed and avoided or denied, is true to the knowledge or belief of this defendant; all which matters and things this defendant is ready and willing to aver, main-
161 tain and prove, as this Honorable Court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

HERBERT S. HADLEY,
Attorney General;
JOHN KENNISH,
Assistant Attorney General,
Solicitors for Defendant.

SANFORD B. LADD,
F. W. LEHMANN,
Of Counsel.

Received copy of the above and foregoing Answer May 4, 1908.

J. L. MINNIS,
FRANK HAGERMAN,
Solicitors for Complainant.

162 Afterwards, to wit, on the 1st day of June, A. D. 1908, the replication of complainant to the joint answer of John A. Knott et al. was filed.

Said replication is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 3000.

WABASH RAILROAD COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendants.

Replication of Complainant to the Joint Answer of John A. Knott, Frank Wightman and H. R. Oglesby, Railroad Commissioners of the State of Missouri, to the Complainant's Amended and Supplemental Bill and the Amendment Thereto.

This replicant saving and reserving to itself all and all manner of advantage of exception which may be had or taken to the manifold errors, uncertainties and insufficiencies of the answer of the said defendants for replication thereunto, saith: That it does and will aver, maintain and prove its said bill to be true, certain and sufficient in the law to be answered unto by the said defendants, and that the answer of the said defendants, is very uncertain, evasive and insufficient in law to be replied unto by this replicant; without that, that any other matter or thing in the said answer contained, material or effectual in law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this replicant is ready to aver, maintain and prove as this honorable court shall direct, and humbly prays as in and by its said bill it hath already prayed.

WELLS H. BLODGETT,
Solicitors for Complainant.

FRANK HAGERMAN,
Of Counsel.

163 Afterwards, to wit, on the 1st day of June A. D. 1908, the replication of complainant to the answer of Herbert S. Hadley, Attorney General was filed.

Said replication is in words and figures as follows:—

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 3000.

WABASH RAILROAD COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendants.

Replication of Complainant to the Answer of Herbert S. Hadley, Attorney General of the State of Missouri, to the Complainant's Amended and Supplemental Bill and the Amendment Thereto.

This replicant saving and reserving to itself all and all manner of advantage of exception which may be had or taken to the manifold errors, uncertainties and insufficiencies of the answer of the said defendant for replication thereunto, saith: That it does and will aver, maintain and prove its said bill to be true, certain and sufficient in the law to be answered unto by the said defendant, and that the answer of the said defendant, is very uncertain, evasive and insufficient in law to be replied unto by this replicant; without that, that any other matter or thing in the said answer contained, material or effectual in law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this replicant is ready to aver, maintain and prove as this honorable court shall direct, and humbly prays as in and by its said bill it hath already prayed.

WELLS H. BLODGETT,
Solicitors for Complainant.

FRANK HAGERMAN,
Of Counsel.

164 Afterwards, to-wit, on the 13th day of June, 1908, the following order was filed and entered of record, to-wit:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General, et al., Defendants.

And also

In Equity.

RAILROAD COMPANIES
vs.
HERBERT S. HADLEY, Attorney General, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004, and 3006.

Order.

Causes numbered 2988, 2989, 2990, 2991, 2995, 2997, 3001, 3002, 3003, and 3006 came on for hearing this June 13, 1908, upon the application of complainants to at once set down for hearing their applications for temporary injunctions. The parties appeared by counsel, the defendants insisting that such hearing be postponed for a period of ninety days, and the court being fully advised in the premises, Orders

1. The Special Master shall file herein so much of the testimony as has been taken in any of the 18 cases.

2. Orders on the applications to set down for hearing at once the motions for temporary injunctions are deferred for the present, and in lieu thereof by consent of counsel all of the 18 cases are set for final hearing the 5th day of October, 1908, or as soon thereafter as the court can hear the same upon such evidence as has been heretofore taken and such further oral and documentary evidence as then may be offered under the 67th rule in equity as amended.

(Signed) SMITH McPHERSON, *Judge.*

165 Afterwards, to-wit, on the 13th day of June, 1908, an affidavit was filed. Said affidavit is in words and figures as follows, to-wit:

STATE OF MISSOURI,
City of St. Louis, ss:

T. F. Wharton, being first duly sworn, says that he is Manager of the Saint Louis Office of Haskins & Sells, Certified Public Accountants, and has been for the past three years; that the firm of Haskins & Sells has been employed by the State of Missouri for the

past two years as expert accountants in connection with the Maximum Freight Rate Litigation and the Passenger Rate Litigation; and that as Manager of the Saint Louis Office, this affiant has been connected with all of said work and is familiar therewith and with the length of time required for such work; that he was asked by the Attorney General on the 9th day of June, 1908, to come to Jefferson City for the purpose of making an examination of statements filed on that date by the following named railroads:

Missouri Pacific Railway Company,
Missouri, Kansas & Texas Railway System,
Chicago, Great Western Railway Company,
Chicago, Rock Island & Pacific Railway Company,
St. Louis & San Francisco Railroad Company,
St. Louis Southwestern Railway Company,
Chicago & Alton Railroad Company,
St. Joseph & Grand Island Railway Company,
Kansas City, Clinton & Springfield Railway Company,
Atchison, Topeka & Santa Fe Railway Company,

such examination to be made in order to determine the length of time necessary for the verification of the reports submitted by the aforesaid railroad companies and for the preparation of reports in relation thereto; that on the 10th day of June, 1908, this affiant went to Jefferson City for the purpose indicated; that he then received from Attorney General Hadley the statements re-
166 ferred to and more particularly described in Exhibits "A" to "J" hereto attached and made a part of this affidavit; Further, that in order to properly pass upon the reports referred to, it will be necessary, First, to verify the clerical accuracy of the figures themselves; Second, to verify the correctness of the comparisons made where there have been such comparisons; and where no comparisons have been made, it will be necessary to prepare, or have prepared, proper comparative statements; Third, to verify the correctness of the division of expenses between freight and passenger business and between state and Inter-State business; and Fourth, it will be necessary to compare the method used in dividing expenses with the method by which such expenses were divided by the Missouri Pacific, Burlington and Wabash Railroads, in the testimony already heard, in the Maximum Freight Rate cases. In addition to this, it will be necessary to secure information in other states, where there has been no change in Passenger Rates during the past two years, as to the effect on Passenger earnings of the business depression, which began about the middle of October, 1907. It will also be necessary to secure from other states where the two cent passenger law has been in effect for some time, information showing the effect of the operation of the law on the earnings of the railroad companies.

In view of the amount of work above outlined that it will be necessary to do in connection with the statements hereinbefore referred to, this affiant believes that it will require the services of four or five experienced accountants for about three months to make the neces-

sary verifications, prepare the necessary statistics, and place in proper form all such matter for the information of the Court.

T. F. WHARTON.

Subscribed and sworn to Before me this 11th day of June, 1908. Commission expires July 14, 1911.

[SEAL.] FRANK WELLER,
Notary Public.

City of St. Louis, Mo.

NOTE.—In the attached exhibits, the word "State" is used to indicate "Intra-State" business.

167 EXHIBIT "A."

Missouri Pacific Railway Company.

Statements Showing Passenger Earnings by Months for the Six Months Ended December 31, 1907 *and* 1906, *Divided Between State and Interstate, with Expenses for the Periods Named; also Reports Showing Freight Earnings and Expenses for the Same Periods.*

Method of dividing expenses and charges between freight and passenger, and State and Interstate business is not shown.

Summary of Intra-State Passenger Business Only, as Shown by Statements, for the Six Months Ended December 31.

	1907.	1906.	Increase.
July to October.....	$580,056.65	$564,593.97	$15,462.68
November and December	218,420.34	245,212.35	26,792.01*
Total.....	$798,476.99	$809,806.32	$11,329.33*
Operating Expenses..	728,676.35	664,730.09	63,946.26
Net Earnings	$69,800.64	$145,076.23	$75,275.59*
Charges, not Including Interest	23,870.87	8,582.45*	32,453.32
Available for Interest and Dividends.	$45,929.77	$153,658.68	$107,728.91*

*Decrease. [In red ink in copy.]

168 EXHIBIT "B."

Missouri, Kansas & Texas Railway System.

Various Monthly Statements of Passenger and Freight Earnings and Expenes for the Period from June 19 to December 31, 1907, with Statements by Months for the Period from June 19 to September 18, 1907 and 1906.

State and Inter-state business is not separated in reports.

Method of dividing expenses between freight and passenger business is not shown.

Summary of Passenger Earnings, Expenses and Charges, as Shown by Statements, for the Periods from June 19 to September 18.

	1907.	1906.	Increase.
Revenue	$365,573.83	$318,861.06	$46,712.77
Operating Expenses	235,619.96	225,148.53	10,471.43
Net Earnings	$129,953.87	$93,712.53	$36,241.34
Taxes and Rentals	25,381.17	27,261.31	1,880.14*
Available for Interest and Dividends	$104,572.70	$66,451.22	$38,121.48

* Decrease. [In red ink in copy.]

169 EXHIBIT "C."

Chicago Great Western Railway Company.

Statements (Supposed to be Filed by this Company) Showing Passenger Earnings Only, by Months, for the Periods from June 19 to September 18, 1907 and 1906, and also for the Three Months Ended September 30, 1907 and 1906, Divided between State and Inter-State.

No expenses are given.

Summary of Passenger Earnings, as Shown by Statements, for the Periods from June 19 to September 18.

	1907.	1906.	Decrease.
Intra-State	$12,568.23	$14,604.75	$2,036.52
Missouri to Other States	19,423.07	21,753.31	2,330.24
Other States to Missouri	20,297.69	18,783.71	1,513.98*
Other States through Missouri	1,225.86	1,047.64	178.22*
Between Points in Missouri Through Kansas	4,181.53	4,292.36	110.83
Total	$57,696.38	$60,481.77	$2,785.39

* Increase. [In red ink in copy.]

170 EXHIBIT "D."

Chicago, Rock Island & Pacific Railway Company.

Statement (Tentative Figures Only) for Period from June 19 (6 a. m.) to and Including September 18, 1907 and 1906, of Passenger and Freight Earnings, Expenses, and Taxes.

Business is not divided between State and Inter-state.
Method of dividing expenses is not given.

Summary of Passenger Earnings, Expenses, and Taxes, as Shown by Statement, for the Period Mentioned Above.

	1907.	1906.	Increase.
Revenue	$271,240.36	$246,701.04	$24,539.32
Operating Expenses:			
Maintenance of Way and Structures	$113,162.23	$85,857.89	$27,304.34
Maintenance of Equipment	48,251.58	37,947.48	10,304.10
Other Expenses	162,531.00	163,760.05	1,229.05*
Total	$323,944.81	$287,565.42	$36,379.39
Deficit from Operations	$52,704.45	$40,864.38	$11,840.07
Taxes	5,411.14	3,946.88	1,464.26
Deficit before deducting Interest, etc.	$58,115.59	$44,811.26	$13,304.33

* Decrease. [In red ink in copy.]

171 EXHIBIT "E."

St. Louis & San Francisco Railroad Company.

Statements by Months and in Total for the Three Months Ended September 30, 1907, of State and Inter-State Passenger and Freight Earnings, Expenses, and Charges.

Method of dividing expenses and charges between Freight and Passenger business is not shown: Expenses and Charges, and Miscellaneous earnings are divided between State and Inter-State business on the basis of the actual earnings of each class of business.

No comparisons are made with the same periods of the previous year, under three-cent law.

Summary of Intra-State Passenger Business, as Shown by Statements, for the Three Months Ended September 30, 1907.

Revenue	$718,992.65
Operating Expenses	599,298.01
Net Earnings	$119,694.64
Taxes and Rentals	24,104.07
Available for Interest and Dividends	$95,590.57

172 EXHIBIT "F."

St. Louis Southwestern Railway Company.

Statement for Six Months Ended December 31, 1907, *of State and Inter-State Passenger and Freight Earnings, Expenses, and Charges, with Memorandum of Bases Used in Dividing Revenues, Expenses, and Charges Between Freight and Passenger and State and Inter-State Business.*

Expenses are divided between Freight and Passenger business generally on basis of revenue train-miles. Expenses are divided between State and Inter-State business on basis of number of passengers one mile. Taxes are divided on basis of freight and passenger revenue of each class.

No comparisons are made with same period of previous year, under three-cent law.

Summary of Intra-State Passenger Earnings and Expenses, as Shown by Statement, for the Six Months Ended December 31, 1907.

Revenue	$29,625.21
Operating Expenses	31,407.27
Loss from Operation	$1,782.06
Taxes and Sundry Charges (Less Other Income)	1,224.67
Total Loss, before deducting Interest	$3,006.73

NOTE.—During the same period, the Inter-State business shows a profit, before deducting interest, of $12,589.49.

173 EXHIBIT "G."

Chicago & Alton Railroad Company.

Statements for the Month of September, 1907, and the Three Months Ended September 30, 1907, and for the Month of October, 1907, and the Four Months Ended October 31, 1907, of Passenger Earnings, Expenses, and Fixed Charges Divided Between State and Inter-State Business.

Method of apportioning expenses and charges to Passenger business *are* not shown. The method of dividing expenses between state and Inter-State business is not shown; but it is evidently on basis of passenger miles; charges divided between State and Inter-State Passenger business on basis of passenger miles.

No comparisons are made with same periods of previous year, under three-cent law.

Summary of Intra-State Passenger Earnings and Expenses, as Shown by Statements, for Four Months Ended October 31, 1907.

Revenue	$193,822.87
Operating Expenses	116,267.44
Available for Interest and Charges	$77,555.43
Amount of Interest and Charges	62,283.85*
Surplus for the period	$15,271.58

*Amount of Interest alone not given.

174 EXHIBIT "H."

St. Joseph & Grand Island Railway Company.

Statement of Passengers Carried and Revenue Received, by Months, for the Six Months Ended December 31, 1907 and 1906, Divided Between State and Interstate.

No expenses are given.

Summary of Passenger Earnings, as Shown by Statement, for the Six Months Ended December 31.

	1907.	1906.	Decrease.
Intra-State	$20,101.43	$25,115.93	$5,014.50
Inter-State	9,718.42	11,384.51	1,666.09
Total	$29,819.85	$36,500.44	$6,680.59

175 EXHIBIT "I."

Kansas City, Clinton & Springfield Railway Company.

Statements of Passengers Carried and Revenue Received, by Months, with Expenses Charged to Passenger Traffic, for the Period from June 19 to November 30, 1907 and 1906.

Expenses are not divided between State and Inter-state business. The method of apportioning expenses to Passenger business is not given.

Summary of Passenger Earnings and Expenses, as Shown by Statements, for the Periods Shown Above.

Earnings.	1907.	1906.	Increase.
Intra-State	$24,319.00	$26,159.57	$1,840.57*
Inter-State	22,171.38	22,043.20	128.18
Total	$46,490.38	$48,202.77	$1,712.39*
Operating Expenses	92,633.11	92,378.03	255.08
Deficit from Operations	$46,142.73	$44,175.26	$1,967.47

*Decrease. [In red ink in copy.]

176 EXHIBIT "J."

Atchison, Topeka & Santa Fe Railway Company.

Statements for the Months of July, August, and September, 1907 and 1906, Showing Passenger and Freight Business, with Expenses of Each, and Statements for the Three Months Ended September 30, 1907 and 1906, Showing Passenger and Freight Earnings, Expenses, and Charges Divided Between State and Inter-State Business.

Method of dividing expenses and charges between freight and passenger business is not shown. Expenses are divided between State and Inter-State business on basis of earnings of each class of business.

Summary of Intra-State Passenger Business, as Shown by Statements, for the Three Months Ended September 30.

	1907.	1906.	Increase.
Revenue from Passengers.	$56,329.47	$50,959.63	$5,369.84
Excess Baggage, Mail, Express, Etc.	24,531.16	24,162.71	368.45
Total	$80,860.63	$75,122.34	$5,738.29

Operating Expenses:			
Maintenance of Way and Structures	$31,779.37	$28,871.00	$2,908.37
Maintenance of Equipment	9,984.00	7,375.10	2,608.90
Other Expenses	28,706.04	27,955.42	750.62
Total	$70,469.41	$64,201.52	$6,267.89
Net Earnings	$10,391.22	$10,920.82	$529.60*†
Taxes and Rentals	1,647.99	1,624.68	23.31
Available for Interest and Dividends	$8,743.23	$9,296.14	$552.91*†

[*In red ink in copy.]
*†Decrease.

177 Afterwards, to-wit, on the 21st day of September, 1908, the Master's Return to Order of June 13, 1908, was filed. Said Master's Return is in words and figures as follows:

Circuit Court of the United States, Western Division of the Western District of Missouri.

No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY
vs.
HERBERT S. HADLEY, Attorney General, et al.

Also

RAILROAD COMPANIES
vs.
HERBERT S. HADLEY, Attorney General, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004 and 3006.

Master's Return to Order of June 13, 1908, with all Testimony Taken.

To the Honorable the Judges of said Court:

In obedience to the order entered in the above mentioned cases, bearing date of June 13, 1908, the undersigned Special Master herewith returns all the testimony taken before him in the three cases in which testimony was taken, viz., the cases of the Missouri Pacific Railway Company, The Chicago, Burlington & Quincy Railway Company, and the Wabash Railroad Company, together with all the

exhibits referred to in said testimony, and being all the testimony taken in any of the said eighteen cases.

Respectfully submitted,

F. L. SCHOFIELD,
Special Master.

Hannibal, Mo., September 18th, 1908.

178 Afterwards, to-wit, on the 5th day of October, 1908, the following order was filed and entered of record, to wit:

In the Circuit Court of the United States, Western District of Missouri.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General, et al., Defendants.

And also

RAILROAD COMPANIES
against
HERBERT S. HADLEY, Attorney General, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004, 3006, all in Equity in said Court.

Orders.

These cases come on for further hearing this October 5th, 1908, pursuant to the orders in all said cases made June 13th, 1908.

And the Court orders that each, all and every of said eighteen (18) cases be and the same are hereby continued until November ninth (9th) A. D. 1908, at ten o'clock A. M., at which time all of said cases will be called for trial, and the trials will then proceed from day to day until concluded. And said cases will be heard and decrees rendered on the evidence heretofore taken before the Special Master, and on such oral testimony and documentary evidence as may be offered by any of the parties to said cases pursuant to General Equity Rules 67 as amended. The evidence taken in any one of said cases shall be used in each, all and every of the other seventeen (17) cases in so far as the same will be pertinent or germane.

179 Said cases will be called and heard in the numerical order given said cases by the clerk; that is to say, the case with the lowest numerical number to be first heard, and the next lowest number next heard, and so on until all said cases are heard.

All agreements between any of the parties in any of said cases, whether such agreements are recited in orders of this court or by the Special Master, or whether such agreements are otherwise in writing, or verbally made, are hereby cancelled and will not be re-

garded by the Court, and future agreements, if any, will only be considered by the Court when reduced to writing and signed by the parties and filed with the clerk in said case or cases.

However, the orders, made in said cases June 13th, 1908, and the agreements therein recited are fully ratified and confirmed except only as to the change of date for hearing from October 5th, 1908, to November 9th, 1908.

And the applications for temporary injunction are continued until November 9th, 1908, or until such later time as said applications may be presented, and the court may be able to hear the same.

Done in open court this October 5th, 1908.

(Signed) SMITH McPHERSON, *Judge.*

Afterwards, to-wit, on the 14th day of December, 1908, the following order was filed and entered of record, to-wit:

UNITED STATES OF AMERICA, *ss:*

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD CO.

vs.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al.

Also

In Equity

180 RAILROAD COMPANIES

vs.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004, and 3006.

MONDAY, *November* 9, *A. D.* 1908.

This day come the parties by their solicitors, the complainant by W. F. Evans, Esq., and Frank Hagerman, Esq., and the defendants by the Honorable Herbert S. Hadley, F. H. Lehmann, Esq., and Sanford B. Ladd, Esq. Thereupon this cause coming on regularly for final hearing, evidence on the part of complainant is begun and the same not being concluded at the hour of adjournment, further proceedings are postponed until tomorrow morning.

(Signed) SMITH McPHERSON, *Judge.*

Afterwards, to-wit, on the 14th day of December, 1908, the following order was filed and entered of record, to-wit:—

UNITED STATES OF AMERICA, *sct:*

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD CO.

VS.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al.

Also

In Equity.

RAILROAD COMPANIES

VS.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004 and 3006.

TUESDAY, *November* 10, 1908.

Now on this day again come the parties by their solicitors. Thereupon the hearing of evidence on the part of complainant is proceeded with and the same not being concluded at the hour of adjournment, further proceedings are postponed until tomorrow morning.

(Signed) SMITH McPHERSON, *Judge.*

181 Afterwards, to-wit, on the 14th day of December, 1908, the following order was filed and entered of record, to-wit:

UNITED STATES OF AMERICA, *sct:*

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD CO.

VS.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al.

Also

In Equity.

RAILROAD COMPANIES

VS.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004, and 3006.

WEDNESDAY, *November* 11, 1908.

Now on this day again come the parties by their solicitors. Thereupon the hearing of evidence on the part of complainant is proceeded

with and the same not being concluded at the hour of adjournment, further proceedings are postponed until tomorrow morning.

(Signed) SMITH McPHERSON, *Judge.*

182 Afterwards, to-wit, on the 14th day of December, 1908, the following order was filed and entered of record, to-wit:—

UNITED STATES OF AMERICA, *sct:*

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD CO.

vs.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al.

Also

In Equity.

RAILROAD COMPANIES

vs.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004, and 3006.

THURSDAY, *November* 12, 1908.

Now on this day again come the parties by their solicitors. Thereupon the hearing of evidence on the part of complainant is proceeded with and the same not being concluded at the hour of adjournment, further proceedings are postponed until tomorrow morning.

(Signed) SMITH McPHERSON, *Judge.*

Afterwards, to-wit, on the 14th day of December, 1908, the following order was filed and entered of record, to-wit:

UNITED STATES OF AMERICA, *sct:*

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

183 In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD CO.

VS.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al.

Also

In Equity.

RAILROAD COMPANIES

VS.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004, and 3006.

FRIDAY, *November* 13, 1908.

Now on this day again come the parties by their solicitors. Thereupon the hearing of evidence on the part of complainant is proceeded with and the same not being considered at the hour of adjournment, further proceedings are postponed until tomorrow morning.

(Signed) SMITH McPHERSON, *Judge.*

Afterwards, to-wit, on the 14th day of December, 1908, the following order was filed and entered of record:

UNITED STATES OF AMERICA, *sct:*

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD CO.

VS.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al.

Also

In Equity.

RAILROAD COMPANIES

VS.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004, and 3006.

SATURDAY, *November* 14, 1908.

Now on this day again come the parties by their solicitors.
184 Thereupon the hearing of evidence on the part of complainant is proceeded with and the same not being concluded at

the hour of adjournment, further proceedings are postponed until Monday, December 14th.

(Signed) SMITH McPHERSON, *Judge.*

Afterwards, to-wit, on the 15th day of December, 1908, the following order was filed and entered of record, to-wit:

UNITED STATES OF AMERICA, *sct:*

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD CO.

vs.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al.

Also

In Equity.

RAILROAD COMPANIES

vs.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004, and 3006.

Now on this day again come the parties by their solicitors. Thereupon the hearing of evidence on the part of complainant is proceeded with and the same not being concluded at the hour of adjournment, further proceedings are postponed until tomorrow morning.

(Signed) SMITH McPHERSON, *Judge.*

Monday, December 14, 1908.

Afterwards, to-wit, on the 16th day of December, 1908, the following order was filed and entered of record:

185 UNITED STATES OF AMERICA, *sct:*

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD CO.

vs.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al.

Also

In Equity.

RAILROAD COMPANIES

vs.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Being Cases Numbered 2889, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004, and 3006.

Now on this day again come the parties by their solicitors. Thereupon the hearing of evidence on the part of complainant is proceeded with and the same not being concluded at the hour of adjournment, further proceedings are postponed until tomorrow morning.

(Signed) SMITH McPHERSON, *Judge.*

Tuesday, December 15, 1908.

Afterwards, to-wit, on the 17th day of December, 1908, the following order was filed and entered of record, to-wit:

UNITED STATES OF AMERICA, *sct:*

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD CO.

vs.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al.

Also

186 In Equity.

RAILROAD COMPANIES

vs.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004, and 3006.

Now on this day again come the parties by their solicitors. Thereupon the hearing of evidence on the part of complainant is pro-

ceeded with and the same not being concluded at the hour of adjournment, further proceedings are postponed until tomorrow morning.

(Signed) SMITH McPHERSON, *Judge.*

Wednesday, December 16, 1908.

Afterwards, to-wit, on the 18th day of December, 1908, the following order was filed and entered of record, to-wit:—

UNITED STATES OF AMERICA, *sct:*

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD CO.

vs.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al.

Also

In Equity.

RAILROAD COMPANIES

v.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004, and 3006.

Now on this day again comes the parties by their solicitors. Thereupon the hearing of evidence on the part of complainant is proceeded with and the same not being concluded at the hour of adjournment, further proceedings are postponed until tomorrow morning.

(Signed) SMITH McPHERSON, *Judge.*

Thursday, December 17, 1908.

187 Afterwards, to-wit, on the 19th day of December, 1908, the following order was filed and entered of record, to-wit:—

UNITED STATES OF AMERICA, *sct:*

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD CO.

VS.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al.

Also

In Equity.

RAILROAD COMPANIES

VS.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004, and 3006.

Now on this day again come the parties by their solicitors. Thereupon the hearing of evidence on the part of complainant is proceeded with and the same not being concluded at the hour of adjournment, further proceedings are postponed until tomorrow morning.

(Signed) SMITH McPHERSON, *Judge.*

Friday, December 18, 1908.

Afterwards, to-wit, on the 21st day of December, 1908, the following order was filed and entered of record, to-wit:

UNITED STATES OF AMERICA, *sct:*

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD CO.

VS.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al.

188 Also

In Equity.

RAILROAD COMPANIES

VS.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004, and 3006.

This day again come the parties by their attorneys. Thereupon evidence on the part of the complainant, St. Louis & San Francisco

Railroad Co., is concluded and further proceedings are postponed until next Tuesday morning at nine o'clock.

(Signed) SMITH McPHERSON, *Judge.*

Saturday, December 19, 1908.

Afterwards, to-wit, on the 22nd day of December, 1908, the following order was filed and entered of record, to-wit:—

UNITED STATES OF AMERICA, *set:*

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD CO.

vs.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al.

Also

In Equity.

RAILROAD COMPANIES

vs.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004 and 3006.

Now on this day again come the parties by their solicitors. Thereupon the hearing of evidence on the part of defendants is begun and the same not being concluded at the hour of adjournment, further proceedings are postponed until tomorrow morning.

(Signed) SMITH McPHERSON, *Judge.*

Tuesday, December 22, 1908.

189 Afterwards, to-wit, on the 23rd day of December, 1908, the following order was filed and entered of record, to-wit:—

UNITED STATES OF AMERICA, *sct:*

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD CO.

vs.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al.

Also

In Equity.

RAILROAD COMPANIES

vs.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004, and 3006.

This day again come the parties by their attorneys. Thereupon further evidence upon the part of the defendants is heard and the same not being concluded at the hour of adjournment further proceedings are postponed until Monday, December 28, 1908, at nine o'clock.

(Signed) SMITH McPHERSON, *Judge.*

Wednesday, December 23, 1908.

Afterwards, to-wit, on the 28th day of December, 1908, the following order was filed and entered of record, to-wit:

UNITED STATES OF AMERICA, *sct:*

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD CO.

vs.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al.

190 Also

In Equity.

RAILROAD COMPANIES

vs.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004, and 3006.

This day again come the parties by their solicitors. Thereupon

the hearing of evidence is proceeded with and further proceedings are postponed until tomorrow morning.

(Signed) SMITH McPHERSON, *Judge.*

December 28, 1908.

Afterwards, to-wit, on the 29th day of December, 1908, the following order was filed and entered of record, to-wit:—

UNITED STATES OF AMERICA, *sct:*

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD CO.

vs.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al.

Also

In Equity.

RAILROAD COMPANIES

vs.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004, and 3006.

This day again come the parties by their solicitors. Thereupon the hearing of evidence is proceeded with and further proceedings are postponed until tomorrow morning.

(Signed) SMITH McPHERSON, *Judge.*

December 29, 1908.

191 Afterwards, to-wit, on the 29th day of December, 1908, a stipulation was filed. Said stipulation is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 3000.

WABASH RAILROAD COMPANY, Complainant,

vs.

HERBERT S. HADLEY et al., Defendants.

Stipulation.

It is hereby agreed that this case shall abide by the orders, judgments and decrees that may be made and entered in case No. 2998,

Chicago, Burlington & Quincy Railroad Company, vs. Herbert S. Hadley, et al.

J. L. MINNIS,
FRANK HAGERMAN,
Solicitors for Complainant.
HERBERT S. HADLEY,
JOHN KENNISH,
Solicitors for Defendants.

192 Afterwards, to-wit, on the 29th day of December, 1908, the following Order was filed and entered of record:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 3000.

WABASH RAILROAD COMPANY, Complainant,
vs.
HERBERT S. HADLEY et al., Defendants.

Now on this day in accordance with the stipulation of parties filed herein, it is ordered that this case shall abide by the orders, judgments and decrees that may be made and entered in case No. 2998, Chicago, Burlington & Quincy Railroad Company vs. Herbert S. Hadley, et al.

(Signed) SMITH McPHERSON, *Judge.*

Dec. 29, 1908.

193 Afterwards, to-wit, on the 30th day of December, 1909, Complainants' Requests for Findings of Fact was filed. Said Requests are in words and figures as follows, to-wit:

Complainants' Requests for Findings of Fact.

1. The complainants are the eighteen railroad corporations owning and operating lines of railway in Missouri, engaged generally in doing therein with the same property, the entire state and interstate railroad business. With the exception hereinafter stated as to the St. Louis & Hannibal and the Kansas City, Clinton & Springfield, they constitute great trunk lines of railroads, carrying in and through Missouri the commerce of the country, state and interstate, reaching and connecting various commercial centers like Chicago, St. Louis, Kansas City, Omaha, Denver, St. Paul, Memphis, New Orleans, and Galveston. Some of them, like the Atchison, Topeka & Santa Fe and the Chicago, Rock Island & Pacific operate through trans-state trains, running from Chicago to the Pacific Ocean. All operate, in connection with other roads at connecting points and large centers so as to carry all the traffic of the state, freight and passenger, not

only that which is state but also that which is interstate, and that which is destined to and from other roads and other states. The interstate business may originate or terminate in the state, or in some instances both there originate and terminate or it may pass through the state with origin and destination both outside thereof. The St. Louis & Hannibal Railway is located wholly within the state, extending from Hannibal, Missouri, through a valuable and populous part of the state, to a point upon the Wabash Railway and is the only one of the complainants, the line of which does not cross the state line. The Kansas City, Clinton & Springfield Railway extends from Olathe, Kansas, (a small town about 20 miles from Kansas City, Mis-
194 souri,) for a distance of about eleven miles to the state line from whence it runs through the southwestern part of the state, but not as in the case with the other railways reaching with its own trains any of the basing points or great commercial or market centers of the state.

2. The same properties, trains and facilities are necessarily used by each company, in conducting both the state and interstate business. It would not be practicable to operate in any other way. If separate cars or trains were required to be operated for the state and interstate business or separate facilities used for each, no one of the complainants could for the business of any or all classes in this state pay operating expenses, the public would be greatly inconvenienced, and enormous investments would be required in order to meet changed conditions. It is absolutely essential to the safety, convenience and economy of passengers and shippers for the business to be conducted as it is, without any attempted separation in conducting upon the same trains and with the same facilities both the state and interstate business.

3. Missouri is peculiarly located so far as concerns the question whether the fixing a state rate directly affects an interstate rate. The state is midway between the Great Lakes and the Gulf of Mexico, and midway between the Atlantic and Pacific Oceans. The vast quantities of traffic, and volumes of travel between the east and west and north and south necessarily cross the entire state. Two great rivers bound the state upon the east and west. Upon these rivers are located great markets and commercial centers. Those at Kansas City being the largest between the Mississippi River and the Rocky Mountains. All freight rates from the east to the west and vice versa are made up of a rate to and from these rivers plus the rate across the state. This has always been so and whatever the reason therefor, as a practical railway problem will always be so if intelligent, experienced and practical railway men are permitted to fix rates upon a fair, reasonable and intelligent basis. The river points, therefore,
195 have become and are rate basing centers. Great cities and markets have been built up by reason of and upon the faith of this fact. At such points great railroad properties have been acquired and extensive terminals provided in view thereof. In many instances the railways there terminate. If a different method were adopted a chaotic condition would be created, business of these cities and markets would be seriously and unduly disturbed and em-

barassed and investments there made largely affected. The actual result is that the short line mileage across the state actually controls and fixes the freight rate by every other railway, no matter what the distance or points of origin and destination may be. From Hannibal to St. Joseph, Missouri, is 198 miles by the Chicago, Burlington & Quincy Railway. This is the shortest rail distance between the rivers. From St. Louis to St. Joseph it is at least 300 miles, to Kansas City 280 and upward. Whenever a freight rate per mile is fixed for the 198 miles, the short route between the rivers, the total rate between all Mississippi and Missouri River points must conform thereto, even though the distance be 300 or more miles. This situation applies to every competitive point between the rivers of which there are many of magnitude and importance. The traffic between St. Louis and Missouri river points, both state and interstate, is enormous. Every railway carrying freight must be at the expense of carrying it from 280 to 300 or more miles, yet receive therefor a rate based upon a distance of 198 miles. Unless it should do so it would not be able to handle enough freight between river points to justify the running of trains. Unless the rates were so fixed no substantial business would be done between the river points because every shipper to or from the east would be compelled to ship by the short line. St. Louis merchants could not compete for western business. In the passenger traffic the universal rule is that the short line between any two stations fixes and establishes the rate. In other words, the rate being fixed per mile, the longer route will not be able to carry passengers between any two points if its total rate exceeds the short line rate. In actual railway operation the state line is wholly arbitrary.
196 Unless the mileage rate is the same, passengers will, if the state rate be lower than the interstate, buy tickets or pay fare to a state line station and there provide themselves anew with tickets thus making an interstate journey partly state. Experience has demonstrated this to be noticeably true. In July and August, 1907, when a two cent fare was in force in Missouri upon state business and three cents upon interstate this practice became quite general. It became absolutely necessary as a practical railroad question to put in force the same rate for state and interstate travel; otherwise it would have become impossible to keep track of a large part of the interstate travel and a large unnecessary expense been incurred by the work imposed at the state line stations. For these and many other reasons shown by the evidence, including those mentioned in paragraph 4, it is a fact that no mileage state rate, for freight or passengers, extending across the state of Missouri, can be established which does not actually and immediately directly affect the interstate rate, not only in but out of the state. It therefore, must as a fact, be said that the rates fixed by the laws complained of in the bills, do directly and immediately affect and regulate interstate commerce.

4. Two of the great trunk lines in Missouri are the Missouri Pacific and the Chicago, Burlington & Quincy Railways. Both extend from St. Louis to St. Joseph,—the Burlington lines between these points are wholly within the state; those of the Missouri Pacific pass out of Missouri at Kansas City, into Kansas, leaving that state at

Atchison, coming again into Missouri. All traffic over the Missouri Pacific from St. Louis to St. Joseph is interstate. If the state rate, freight or passenger, be lawfully fixed the Burlington must conform thereto on its St. Louis and St. Joseph business. When it so does this rate must be met by the Missouri Pacific or else the latter will get none of the business. This situation is applicable to all the Missouri Pacific business between St. Joseph and Kansas City and all
197 points east thereof. The Burlington and other roads as direct and as connecting carriers compete therefor. A very large and substantial part of the business of the Missouri Pacific is carried from St. Joseph to Kansas City and St. Joseph and points between and is thus affected. The same situation exists as to other companies. The Chicago Great Western Railway between St. Joseph and Kansas City runs from Missouri, thence into Kansas, and back into Missouri, making the business interstate. The lines of the Burlington and St. Joseph & Grand Island companies between these points are wholly within the state. The lines of the St. Louis & San Francisco and Kansas City Southern companies between Kansas City and Joplin and the great lead and zinc mining districts of Missouri, start from Kansas City, Missouri, extend into Kansas, and thence back into Missouri, thus making the journey interstate. The Missouri Pacific line between these points is wholly state. The Missouri, Kansas & Texas also runs from Missouri into Kansas and back into Missouri, competing with lines wholly in the state. In each of these instances a very large and substantial part of the business of each of said companies originates and terminates in Missouri yet by passing in its journey out of the state is interstate. In each instance if the competing line wholly in the state is by state law compelled to lower its rate, those doing such interstate business must likewise reduce their rates between the same state points or do none of the business. All the complainants have joint tariffs with the others, doing one with the other, a through connecting business. The laws complained of in the bills do therefore directly affect and interfere with a substantial part of traffic of the state which is interstate commerce originating and ending in the state, particularly much of that kind upon the lines of the Missouri Pacific, Chicago Great Western, St. Louis & San Francisco and Missouri, Kansas & Texas companies. The laws complained of are general in their nature, making neither classification nor exception. So by reason of the peculiar location of many of the large roads in Missouri a unique situation is presented whereby
198 wholly independent of the facts set forth in paragraph 3, state rates certainly directly and immediately affect interstate traffic both freight and passenger. So great an amount of interstate business is affected thereby that if it was permitted to be free from state regulation, and the other companies in the state refused to conform to the rates fixed by the laws by the bills herein questioned, they as competitors, whether original or connecting carriers, would lose so much state business that they would be compelled to carry at an actual loss that which remained of that class of traffic.

5. Much difficulty in the cases has been obviated by complainants making up and delivering to defendants, from time to time, state-

ments showing the earnings and expenses for certain periods, which seem to have been treated by the parties as sufficiently illustrative of the situation to enable a fair determination of the controversy to be had. Complainants have extended to defendants every facility, given them the fullest opportunity, and granted them every possible courtesy, so that any experts for defendant have had every opportunity to call for any figures and to make up any statement upon any theory desired. Inasmuch as the same periods of time, in the various statements submitted, were adopted by both parties, the findings as to each company will follow along the same line, and actually mean that such period should be considered as representative of the situation generally. Inasmuch as the freight act of 1907 covered the same commodities as the Acts of 1905 but allowed an increased earning, it follows as was conceded by defendants at the trial, if the freight act of 1907 was confiscatory, that of 1905 was likewise confiscatory but to a greater degree. It must therefore be said that the rates fixed by the laws complained of in the bills do, in fact, directly and immediately affect inter-state rates and directly regulate a large and substantial part of interstate commerce of the state and interstate carriage, freight and passenger, upon the Missouri Pacific, Chicago Great Western, St. Louis & San Francisco, Kansas City Southern and Missouri, Kansas & Texas Railways and their connecting carriers.

199 6. The earnings in a state, from state and interstate business, can be ascertained with a reasonable degree of certainty from the way-bills, tickets and cash fares. The books and papers of complainants are and always have been so made and kept that it is a mere matter of expense, though considerable, and detail work, though extensive, to make the ascertainments. The freight earnings consist of earnings from transportation and from miscellaneous services, such as switching, demurrage, storage and track rentals. Passenger earnings are those from passenger fares and miscellaneous services, such, for instance, as mail, express and excess baggage.

7. No serious difference has arisen in the separate cases as to the ascertainment of the expense of doing the entire passenger, freight or miscellaneous business in the state. So, with a reasonable degree of certainty, and wit[illegible]tle controversy, this division can be and has been made. Inasmuch as these expenses are incurred by the use of the same properties, car tracks and facilities, there is not and never has been any certain known fixed rule or method by which, to a mathematical certainty, these different expenses so separated can be divided, as between state and interstate business. The method to be adopted in making the division was the chief serious controversy at the trial. Complainants claim that the division should be upon the revenue basis, in which way there can in the first instance, be assigned to each class of business, freight, miscellaneous freight, passenger and miscellaneous passenger, or to all or any of them combined, a reasonable and fair amount as state and inter-state expenses respectively to which should be added such sum as would represent the extra cost of doing state over interstate business. The

defendants claim that the division should be, for freight, upon the ton-mile basis, and for passenger, upon the passenger-mile basis, and that miscellaneous freight earnings and expenses should be included in freight and miscellaneous passenger earnings in those of passenger. As the revenue proportion is, in most instances, nearly twice as much as the ton-mile proportion, the reason for the
200 difference is apparent. By the revenue basis is meant assigning as expense of state business, of any particular kind or kinds, such proportion of the total expense in the state on that class of business as the earnings from that class of state business bears to all the earnings (state and interstate) from the same class; or, as often put, ascertain what proportion all expenses are of all earnings, and then multiply the state earnings of any class thereby, thus finding a sum which would equal the expenses to be there assigned. By the ton-mile basis is meant the assignment to state freight expenses such proportion of all freight expense as the number of tons per mile of state freight bears to the total ton-miles of all freight hauled in the state. By the passenger-mile basis is meant the assignment as state passenger expenses such proportion of all passenger expenses as the number of passengers in state business carried one mile bears to the whole number of passengers (state and interstate) carried one mile.

Another method of division of freight expense is upon the basis of the number of tons carried, regardless of distance. In results there is little difference, as a division on this basis is practically the same as that which is shown by the revenue basis. Neither party has adopted it as a basis of division.

8. There being no method by which the division of expenses as between state and inter-state, can be made to a mathematical certainty, calculations have been made upon every reasonable basis, and a determination reached, in the light of all the evidence, of a reasonable sum, in money, which should be actually charged as the expense of doing each class of state business. To this should be added the extra cost of doing the state business. The sums hereinafter found were first actually ascertained by a division upon a revenue basis. Then, after considering all things, they were and are adopted as the proper sums to reasonably represent an actual fair apportionment of expenses as between state and inter-state business. Any apportionment of freight expenses, upon a ton-mile basis would charge too small an amount as state expense.
201 This would make necessary the use of a multiple of extra cost, large enough to make the sum total of state freight expense equal that hereinafter accurately found to reasonably represent the cost as it ought from the evidence to be found. Any apportionment of passenger expense, upon the passenger mile or any other basis which would not make the state passenger expense equal in dollars the sum hereinafter found, would be unfair and unjust.

9. All things considered, the evidence duly weighed, there being no abnormal feature, the cost of doing the different classes of state business, ascertained as between state and interstate, upon a revenue basis, brings a result in dollars in Missouri which is fair, just, rea-

sonable and representative. That method of ascertainment is much better and more satisfactory than any other which has, by anyone, been suggested. If the law be that some one theory must be adopted, then the revenue basis would be and is hereby accepted as correct. However, in these cases, although the ascertainment is actually made upon the revenue basis, the figures, when ascertained, have been considered in the light of all the facts and circumstances in evidence, and then in and of themselves and independently of their method of ascertainment, also adopted as fairly and justly representing the cost and expense of doing each class of state business.

10. There is an extra cost and expense of doing state over interstate business, both as to freight and passenger. This extra cost is as to each complainant, for freight, much in excess of fifty per cent of all freight expense, and for passenger in excess of twenty-five per cent of all passenger expense. While the extra cost is much in excess of these figures, yet, for the purpose of this case, they may, as to each complainant, be adopted as the minimum. How much more the extra cost is, need not be now determined, because at the minimum figures thus fixed, the rates in question are, in view of the case, unreasonable and confiscatory. If the ton-mile method of apportionment of freight expenses were adopted, the mul-
202 tiple of extra cost of doing each class of state business would be fixed as such figures as would make the entire expense as increased, equal to that hereinafter found, because, the total amount as found, regardless of the method of finding same, being that which fairly represents the minimum actual cost and expense of doing such state business.

11. After ascertaining the cost of doing the different classes of state business, and deducting same from the earnings there should be and there is deducted from the state freight earnings of each complainant such sum as would equal its diminution of earnings *of each complainant such sum as would equal its diminution of earnings* upon the commodities covered by the act, if the rates thereon fixed thereby had been charged. This has been done as to each complainant.

12. In the case of each complainant, other than the St. Louis & Hannibal Railway Company, and Kansas City, Clinton & Springfield Railway Company, the earnings should be sufficient, in any event, to fully meet its proportion of the interest upon the bonded indebtedness, there being nothing out of the ordinary as to such indebtedness, and nothing to indicate that the property was unduly bonded. Such interest has been regularly paid for years, and there is nothing to indicate any improper bonding. The proportion of the property assignable to any of the state traffic, upon a revenue basis, is actually worth more than enough to justify such return. The proportions of the property of the St. Louis & Hannibal and the Kansas City, Clinton & Springfield respectively, assignable to any of the state traffic, are worth enough to justify some substantial return. However, irrespective of this finding and eliminating any question of interest, the rates in ques-

tion are as hereinafter shown insufficient to make a fair and reasonable return upon the value of the portion of the property of each complainant devoted to the use.

13. Each class of business of each complainant should have
203 assigned to it its fair proportion of the value of the entire property in the state as that upon which it is entitled to a return. Such a division hereafter made, is upon a revenue basis. The result reached thereby is so fair, just and reasonable that they are, in view of all the facts, adopted, regardless of the method of ascertainment. There has been fixed a minimum valuation for the railway property in the state. The property is worth at least that much. There is and should be assigned to each class of state business such proportion of such valuation as the gross state revenue of that class, bears to the gross revenue in the state. When this is done there is ascertained a sum which, in any event, is, considering all of the evidence, and regardless of the method by which the result is reached, the very least value upon which a reasonable return should be had as to that class of business. These figures, as to values, are probably less than the actual values, but for the purposes of the cases are taken as figures representing a minimum valuation upon which at least a fair return should be had, if any, because the rates in question at such valuation are confiscatory. It is therefore unnecessary to consider how much more the property is worth.

14. There are, therefore, in the cases tried, findings made and hereinafter set forth, showing: (*a*) All earnings, state and interstate, freight, miscellaneous freight, passenger and miscellaneous passenger; the proportions which state and interstate freight and passenger earnings (exclusive of miscellaneous) bear to all combined state and interstate freight and all passenger earnings (including miscellaneous) respectively, and that which they bear to all earnings in the state. (*b*) Miscellaneous freight and miscellaneous passenger earnings, (undivided as between state and interstate) with the proportions they are of all earnings and of, respectively, all freight and passenger. (*c*) All expenses, divided in proportion to revenue, as between all kinds of freight and passenger business, including miscellaneous but undivided as between state and interstate. (*d*) A deduction from all state freight (exclusive of
204 miscellaneous), of such proportion of the expenses of all freight and all passenger respectively, as the freight and passenger respectively, exclusive of miscellaneous, bore to all freight and passenger earnings. (*e*) A like deduction of extra cost of doing such business respectively, including miscellaneous. (*f*) A deduction from freight earnings of sums equalling the diminution which would have been caused if the rates fixed by the act had been charged. (*g*) The value of that portion of complainants' property assignable to the particular traffic. This is ascertained by taking, for each class of business, of the entire value in the state such proportion as the earnings upon that portion of the business bear to all the earnings in the state.

The results thus reached and the sums finally ascertained irrespect-

ive of the methods by which the apportionments are made, in the light of all the facts and circumstances in evidence, are fair just and reasonable, and such as ought, in each instance, to be fixed. Anything in the way of a return less than six per cent. interest upon the part of the property assignable to any traffic in question is unreasonable and confiscatory.

15. The complainants made out and served their statements upon defendants, not dividing the miscellaneous as between state and interstate, for the reasons therein thus set forth:

"Inasmuch as differences might arise between complainant and the state as to the method of apportioning miscellaneous freight, and mail, express and miscellaneous passenger earnings, and as no question as to such earnings is here involved, same have to avoid confusion and unnecessary controversy, been left undivided as between state and interstate earnings."

No request was ever made for such a division, though it could have been made by complainants had a request been made therefor by defendants. The actual division could have been made by defendants had they so desired. If an accurate division were necessary it would even now be called for, regardless of the time necessary to be devoted to the work, though neither party is entitled to have the case delayed to obtain the information. To do so would
205 make necessary a possible change in some percentages, though not enough to change the result. As neither party thought an actual division was necessary, a court could well assume as the proofs clearly show, that if made, the final result of the case would not be changed thereby. As a matter of fact it would be fairer and better to deal alone with the effect of the laws in question upon strictly freight and passenger business. At the trial, however, the state's experts made an estimated division of these miscellaneous earnings, both freight and passenger, as between state and interstate, by arbitrarily assigning the same in the proportion of the revenue received from purely freight and purely passenger earnings respectively. This was an arbitrary basis, unwarranted in fact and made in a method which assigned entirely too great a proportion to the state business and improperly and unnecessarily enlarged the state earnings. It is, therefore rejected. From the figures hereinafter set forth, it will be seen that the miscellaneous earnings are but a small proportion of all earnings, especially of the freight. To avoid confusion in making new tabulations, the arbitrary division made by the state's experts may be assumed to be correct, still this would make no difference in the result of the cases. This because there should be charged against these earnings a sum equalling the revenue proportion of all the expense of freight and passenger respectively, plus an extra cost of doing state business. The sums ascertained in this way would be the fair, just and equitable charge as the minimum expense of doing such business. When so made there should be assigned as the valuation upon which there should be a return, such proportion of the entire value as the respective earnings from miscellaneous freight and passenger, bear to all earnings. When this is done it is apparent that no fair return is re-

ceived upon this class of business. Hence, if the miscellaneous earnings were added to the freight and passenger earnings respectively, so as to consider all freight as a whole, and also all passenger as a whole, the result reached will not and could not be changed. Had a desire been, in proper time, expressed for an accurate division of miscellaneous earnings as between state and interstate, according to the facts, it would have been ascertained, so that the loss would have been shown, considering freight and passenger earnings alone, and also such loss considering the miscellaneous with each. However, the miscellaneous passenger business consists in the main of mail and express, and it is difficult to see why, in ascertaining the losses or gains under a two cent fare law there should be included either losses or gains from the miscellaneous earnings, especially when the main portion of the earnings are more in the nature of freight earnings from a passenger service.

206

16. The expense of doing all the state business, when ascertained on the revenue basis, estimating the extra cost of doing the state freight business at the minimum of at least 50 per cent, and the passenger business at the minimum of at least 25 per cent, shows a sum which would be fair and reasonable to adopt as the cost of doing the entire state business. So that, if all the state business be considered as a whole and be done at the rates now in existence and those fixed by the laws questioned in the bills, there is no doubt that there is no reasonable or compensatory return upon the value of the portion of the property assignable to the whole of the state traffic. It is not here necessary to determine whether, as many competent railroad managers say, that no state rates are compensatory. It is true that such will be the result in Missouri, if the laws in question are enforced. There is a reason why, there, it is true. That state is peculiar in its central location, its class of business, and the location of its cities. The short line between the rivers, as a transportation problem, necessarily fixes the rate for the enormous freight traffic passing to and from the east and the west. There are located at the two rivers two of the great markets of the United States. Freight rates are, by state laws and state commissions, fixed to a large extent upon a mileage basis. The result is that the vast traffic between Kansas City and St. Louis is done at the expense of a carriage of 280 miles and upwards, whereas, the compensation of the carrier is fixed upon the theory of a carriage of 198 miles. So with the passenger business. There are many large centers upon each side of the state, particularly the great cities, St. Louis, Kansas City and St. Joseph. There are many large competitive cities in the interior. There are great and marked differences in the respective distances between competitive points on the many different lines in the state. As passenger rates are fixed by law upon the mileage basis the necessary result is that every company has numerous instances in which it is put to the expense of a carriage of a long distance but is paid at a rate for a much shorter distance. Taking these facts into consideration, together with the extra cost of doing state business, it is a fact, whether all state business be treated as a whole or subdivided into classes, the rates now

207

in existence and those fixed by the laws in question, fail to bring any fair or substantial return; nothing like one-half of the rate of interest which is fixed by law.

17. The adoption of the two cent fare did not cause any substantial increase in travel. At first a great many persons rode as state passengers to and from the state line, so that the state obtained more revenue than that to which it was entitled. Any statement of the passenger business which includes July and August, 1907, is unduly fair to the state. However, state and interstate fares soon became the same, and the longer the period over which the figures are extended the greater will be the loss shown.

18. If the companies had, after the two-cent passenger rate went into effect, been permitted to charge the amount which they, prior thereto, actually received per passenger per mile, they would have received this much more money:

208

Name of road.	Period covered, months.	From State passengers.	From Interstate passengers.
St. L. & S. F. R. R. Co.....	12	666,008.72	509,738.63
A. T. & S. F. Ry. Co.....	12	30,885.52	66,271.03
C. R. I. & P. Ry. Co. and St. L. K. C. & C. Ry. Co.....	12	124,469.14	111,178.60
K. C. So. Ry. Co.....	12	7,044.49	27,260.75
St. L. & H. Ry. Co.....	12	37,275.38	145.23
M. K. & T. Ry. Co.....	12	140,593.46	63,815.12
K. C. C. & S. Ry. Co.....	12	14,654.57	10,846.91
C. B. & Q. R. R. Co.....	12	394,878.77	261,556.41
C. G. W. Ry. Co.....	12	65,945.96	46,162.17

19. In the case of the St. Louis & San Francisco Railway there were included in the expenses sums paid as rentals under a lease of the Kansas City, Fort Scott & Memphis Railway. The common stock of the latter company is owned by the St. Louis & San Francisco, which operates the property under a lease, requiring it to pay to the holders of preferred stock of the Memphis as a rental a sum equal to a four-per-cent annual dividend thereon. There is nothing to impeach the fairness of the lease or its terms. It has been in existence for years. This rental has always been treated as an operating expense and not included in the fixed charges, nor included in the stock issue or bonded indebtedness or interest charge. It is therefore treated as it should be and in fact is, part of the expenses. The total amount charged in the accounts hereinafter set forth as part of the state freight expense is $8,428.56 and as part of the state passenger expense $7,443.68. If these items should be eliminated from the expenses, there would be no difference in the result.

20. The minimum values of the railway properties in the state belonging to and used by the complainants in Missouri are:

209

	Miles.	Value.	Value per mile.
St. Louis and San Francisco (1907)	1688.89	61,238,414.70	36,259.00
Atchison, Topeka & Santa Fe (1907)	348.31	15,091,212.00	43,326.00
Chicago, Rock Island & Pacific (1907)	515.48	19,102,507.59	37,058.00
Kansas City Southern (1908)	174.48	8,039,084.40	46,075.00
St. Louis & Hannibal (1907)	120.61	1,143,007.02	9,477.00
Missouri, Kansas & Texas (1908)	506.21	20,894,229.93	41,276.00
Chicago Burlington & Quincy (1908)	1136.34	53,172,907.83	46,793.00
Kansas City Clinton & Springfield (1907)	151.01	2,380,222.48	15,762.00
Chicago Great Western (1907)	84.43	3,605,236.38	42,701.00

The sums thus found as the minimum values in all cases except those of the Kansas City, Clinton & Springfield and St. Louis & Hannibal, are in fact the same as estimated by the assessing officers of Missouri. In the cases of those two companies it is one third less. Nevertheless the valuations thus found are, aside from, and independently of the fact that they were estimates of the state, found in view of all the facts and circumstances in evidence to be the minimum fair and reasonable values of the properties.

21. There are now made and submitted, tables showing the earnings and expenses and assignable fixed charges and value of the complainants' property in the cases tried. From the expenses, even taxes and rentals are excluded, though probably they should not be. The periods over which the findings extend were, at the trial, adopted by the parties as fairly representative. They are in fact sufficiently fairly representative of the actual earnings and expenses, under ordinary and usual conditions, to be used as tests to determine whether the rates permit of a reasonable return upon the investment. They were supported by statements covering other years and longer periods. These tables treat state freight as distinct from miscellaneous freight, and state passenger as distinct from miscellaneous pas-
210 senger, but do not charge against either freight or passenger earnings any expense of doing miscellaneous business, nor do they include in the assignable proportion of value or interest any part of that assignable to the miscellaneous business. Nor do these tables include the St. Louis Southwestern, Missouri Pacific, St. Louis, Iron Mountain & Southern, Quincy, Omaha & Kansas City, Wabash, St. Joseph & Grand Island, Chicago, Milwaukee & St. Paul, or Chicago & Alton Railways. This because the cases of these companies, by stipulations, are to abide the result in other cases as to which findings are made. These tabulations contain the figures agreed upon by the experts for both sides if the court should adopt the results reached by a revenue basis.

(A) St. Louis and San Francisco R. R. Company.

(1) Period Covered.

The representative period taken by the experts upon both sides as to this company *are* for three months ending September 30th, 1907, and in that period the earnings and expenses were as set forth in subdivisions (1) and (2).

(2) Earnings and Percentages.

Character.	Amount.	Per cent of all freight earnings.	Per cent of all earnings.
Interstate freight.....	$2,214,002.82	76.94	54.68
State freight.....	577,192.84	20.04	14.26
Miscellaneous freight.....	86,814.57	3.02	2.14
Total.....	2,878,010.23	100.	71.08
		Per cent of all passenger earnings.	
Interstate passenger.....	368,687.43	31.49	9.11
State passenger.....	599,051.59	51.17	14.79
Miscellaneous passenger...	203,077.28	17.34	5.02
Total.....	1,170,816.30	100.	28.92
Grand Total.....	4,048,826.53	.....	100.

211 (3) Expenses, Less Taxes & Rentals, Undivided Between State and Interstate.

All freight expense, including miscellaneous.....	$1,802,813.26
All passenger expenses including miscellaneous.....	974,816.61

	Freight.	Passenger.
Percentage of expenses to earnings.....	62.64%	83.26%

(4) Taxes and Rentals.

Freight	$112,452.04
Passenger	38,979.63
Total.....	151,431.67

(5) State Earnings and Expenses.

	Freight.	Passenger.
State earnings above shown are	577,192.84	599,051.59
Expense of state business	361,644.33	498,716.20
Leaving	215,548.51	100,335.39
Less Taxes & Rentals (Par. 4)	22,760.29	20,097.90
Leaving	192,788.22	80,237.49
Deduct extra cost of state business freight estimated at 50%, passenger 25%	131,425.08	53,907.36
Leaving	61,363.14	26,330.13
Deduct diminution in earnings if the state freight rates in question had been charged	11,389.27	.....
Leaving as surplus	49,973.87	26,330.13

(6) Valuation.

Valuation of property in state is $61,238,414.70 of which 14.26% is assignable to state freight and 14.79% to state passenger business	2,183,149.48	2,264,290.38
Six per cent upon this part for the period covered is	130,988.97	135,857.42

(7) Return on Value.

In the way of a return upon the assignable value found in subdivision 6, the surplus shown in subdivision 5 is	2.29%	1.16%

(8) Interest Charge.

The actual interest charge paid, divided in the assignable proportions shown in subdivision 6 is	$116,792.45	$121,133.27

212 (B) Atchison, Topeka & Santa Fe R. R. Company.

(1) Period Covered.

The representative period taken by the experts upon both sides as to this company *are* for six months ending Dec. 31, 1907, and in that period the earnings and expenses were as set forth in subdivisions (1) and (2).

(2) Earnings and Percentages.

Character.	Amount.	Per cent of all freight earnings.	Per cent of all earnings.
Interstate freight	$1,872,915.00	90.05	67.72
State freight	141,133.00	6.79	5.10
Miscellaneous freight	65,833.56	3.16	2.38
Total	2,079,881.56	100.	75.20
		Per cent of all passenger earnings.	
Interstate passenger	355,318.12	51.81	12.85
State Passenger	104,370.19	15.22	3.77
Miscellaneous passenger	226,080.00	32.97	8.18
Total	685,768.31	100.	24.80
Grand Total	2,765,649.87	.....	100.

(3) Expenses, Less Taxes & Rentals, Undivided Between State and Interstate.

All freight expense including miscellaneous	1,382,738.65
All passenger expense, including miscellaneous	572,167.20

	Freight.	Passenger.
Percentage of expenses to earnings	66.48%	83.43%

213 (4) Taxes & Rentals.

Freight	32,361.50
Passenger	10,854.04
Total	43,215.54

(5) State Earnings and Expenses.

	Freight.	Passenger.
State earnings above (par. 2) shown are	141,133.00	104,370.19
Expense of state business	92,581.89	87,834.09
Leaving	48,551.11	16,536.10
Less Taxes & Rental	3,503.41	901.74
Leaving	45,047.70	15,634.36

Deduct extra cost of state business freight estimated at 50%, passenger 25%	41,859.55	17,947.71
Leaving.....	3,188.15	Def. 2,313.35
Deduct diminution in earnings if the state freight rates in question had been charged.....	13,885.87	.....
Leaving.....	Def. 10,697.72	Def. 2,313.35

(6) Valuation.

Valuation of property in state is $15,091,212.00, of which 5.10% is assignable to state freight, and 3.77% to state passenger business.....	384,825.91	284,469.35
Six per cent upon this part for the period covered is.....	23,089.35	17,068.16

(7) Return on Value.

In the way of a return upon the assignable value found in subdivision 6, the deficit shown in subdivision 5 is.....	Nothing %	Nothing %

(8) Interest Charge.

The actual interest charge paid, divided in the assignable proportions shown in subdivision 6 is.....	17,934.56	13,257.51

214 (C) CHICAGO, ROCK ISLAND & PACIFIC RY. COMPANY.

(1) Period Covered.

The representative period taken by the experts upon both sides as to this company *are* for three months ending September 30, 1907, and in that period the earnings and expenses were as set forth in subdivisions (1) and (2)

(2) Earnings and Percentages.

Character.	Amount.	Per cent of all freight earnings.	Per cent of all earnings.
Interstate freight	$665,228.16	79.38	59.86
State freight	$150,953.68	18.02	13.58
Miscellaneous freight	$21,815.70	2.60	1.96
Total.....	$837,997.54	100.	75.40

		Per cent of all passenger earnings.	
Interstate passenger	$113,524.21	41.53	10.22
State passenger	114,853.04	42.02	10.33
Miscellaneous passenger	44,980.08	16.45	4.05
Total	$273,357.33	100.	24.60
Grand Total	$1,111,354.87	.....	100.00

(3) Expenses, Less Taxes and Rentals, Undivided Between State and Interstate.

All freight expense, including miscellaneous	$619,199.73
All passenger expense, including miscellaneous	317,633.62

	Freight.	Passenger.
Percentages of expenses to earnings	73.89%	116.20%

215 (4) Taxes and Rentals.

Freight	$74,227.43
Passenger	21,015.44
Total	$95,242.87

(5) State Earnings and Expenses.

	Freight.	Passenger.
State earnings above (par. 2) shown are	$150,953.68	$114,853.04
Expense of state business	111,579.80	133,469.65
Leaving	$39,373.88	Def. 18,616.61
Less taxes and rentals	13,375.78	8,830.68
Leaving	$25,998.10	Def. 27,447.29
Deduct extra cost of state business freight estimated at 50%, passenger 25%	$41,919.82	17,501.61
Leaving	Def.$15,921.72	Def. 44,948.90
Deduct diminution in earnings if the state freight rates in question had been charged	$9,989.43	.....
Leaving	Def.$25,911.15	Def. 44,948.90

(6) Valuation.

Valuation of property in state is $19,102,507.59, of which 13.58% is assignable to state freight and 10.33% to state passenger business	$648,530.13	$493,322.26
Six per cent upon this part for the period covered is.....	$38,911.81	$29,599.34

(7) Return on Value.

In the way of a return upon the assignable value found in subdivision 6, the deficit shown in subdivision 5 is.....	Nothing %	Nothing %

(8) Interest Charge.

The actual interest charge paid, divided in the assignable proportions shown in subdivision 6, is.....	$24,907.02	$18,946.21

216 (D) Kansas City Southern Railway Company.

(1) Period Covered.

The representative period taken by the experts upon both sides as to this Company *are* for six months ending June 30, 1908, and in that period the earnings and expenses were as set forth in subdivisions (1) and (2).

(2) Earnings and Percentages.

Character.	Amount.	Per cent of all freight earnings.	Per cent of all earnings.
Interstate freight.....	$702,249.91	79.35	67.11
State freight.....	38,748.76	4.38	3.70
Miscellaneous freight.....	144,046.62	16.27	13.77
Total.....	$885,045.29	100.	84.58
		Per cent of all passenger earnings.	
Interstate passenger.....	$89,504.58	55.47	8.55
State passenger.....	31,865.28	19.75	3.05
Miscellaneous passenger...	39,973.54	24.78	3.82
Total.....	$161,343.40	100.	15.42
Grand Total.....	$1,046,388.69	.....	100.00

(3) Expenses, Less Taxes and Rentals, Undivided Between State and Interstate.

All freight expense, including miscellaneous	$571,297.54
All passenger expense, including miscellaneous	141,432.56

	Freight.	Passenger.
Percentages of expenses to earnings	64.55%	87.66%

217 (4) Taxes and Rentals.

Freight	$22,331.70
Passenger	3,737.37
Total	$26,069.07

(5) State Earnings and Expenses.

	Freight.	Passenger.
State earnings above (par. 2) shown are	$38,748.76	$31,865.28
Expense of state business	25,022.83	27,932.93
Leaving	$13,725.93	3,932.35
Less taxes and rentals	978.13	738.13
Leaving	$12,747.80	3,194.22
Deduct extra cost of state business freight estimated at 50%, passenger 25%	11,711.60	5,346.15
Leaving	$1,036.20	Def. 2,151.93
Deduct diminution in earnings if the state freight rate in question had been charged	2,957.58	.....
Leaving	Def. $1,921.38	Def. $2,151.93

(6) Valuation.

Valuation of property in state is $8,039,084.40, of which 3.70% is assignable to state freight, and 3.05% to state passenger business	$148,723.06	$122,596.04
Six per cent upon this part for the period covered is	8,923.38	7,355.76

(7) Return on Value.

In the way of a return upon the assignable value found in subdivision 6, the deficit shown in subdivision 5 is	Nothing %	Nothing %

(8) Interest Charge.

The actual interest charge paid, divided in the assignable proportions shown in subdivision 6, is	$5,295.38	$4,365.11

218 (E) St. Louis & Hannibal Railway Company.

(1) Period Covered.

The representative period taken by the experts upon both sides as to this company *are* for the year ending June 30, 1908, and in that period the earnings and expenses were as set forth in subdivisions (1) and (2).

(2) Earnings and Percentages.

Character.	Amount.	Per cent of all freight earnings.	Per cent of all earnings.
Interstate freight	$51,735.05	36.25	24.61
State freight	$87,941.99	61.62	41.84
Miscellaneous freight	$3,044.11	2.13	1.45
Total	$142,721.15	100.	67.90
		Per cent of all passenger earnings.	
Interstate passenger	$198.19	0.29	0.09
State passenger	52,667.38	78.04	25.05
Miscellaneous passenger	14,619.99	21.67	6.96
Total	$67,485.56	100.	32.10
Grand Total	$210,206.71	.....	100.

(3) Expenses, Less Taxes and Rentals, Undivided Between State and Interstate.

All freight expense, including miscellaneous	$117,908.81
All passenger expense, including miscellaneous	68,343.04

	Freight.	Passenger.
Percentages of expenses to earnings	82.61%	101.27%

219 (4) Taxes and Rentals.

Freight	$5,994.07
Passenger	2,273.61
Total	**$8,267.68**

(5) State Earnings and Expenses.

	Freight.	Passenger.
State earnings above (par. 2) shown are	$87,941.99	$52,667.38
Expense of state business	$72,655.40	$53,334.91
Leaving	$15,286.59	Def. 667.53
Less taxes and rentals	$3,693.55	1,774.32
Leaving	$11,593.04	Def. 2,441.85
Deduct extra cost of state business freight estimated at 50%, passenger 25%	$12,026.69	2,444.68
Leaving	Def. $433.65	Def. $4,886.53
Deduct diminution in earnings if the state freight rates in question had been charged	15,126.02	.....
Leaving	Def. $15,559.67	Def. 4,886.53

(6) Valuation.

Valuation of property in state is $1,143,007.02, of which 41.84% is assignable to state freight, and 25.05% to state passenger business	$478,234.14	$286,323.26
Six per cent upon this part for the period covered is	$28,694.05	$17,179.40

(7) Return on Value.

In the way of a return upon the assignable value found in subdivision 6, the deficit shown in subdivision 5 is	Nothing %	Nothing %

(8) Interest Charge.

The actual interest charge paid, divided in the assignable proportions shown in subdivision 6, is	$16,359.44	$9,794.55

220 (F) MISSOURI, KANSAS AND TEXAS RAILWAY COMPANY.

(1) Period Covered.

The representative period taken by the experts upon both sides as to this company *are* for July, August, October, November and December, 1907, and January, 1908, and in that period the earnings and expenses were as set forth in subdivisions (1) and (2).

(2) Earnings and Percentages.

Character.	Amount.	Per cent of all freight earnings.	Per cent of all earnings.
Interstate freight	$1,333,455.26	81.73	57.89
State freight	$277,416.52	17.01	12.04
Miscellaneous freight	$20,603.37	1.26	0.89
Total	$1,631,475.15	100.	70.82
		Per cent of all passenger earnings.	
Interstate passenger	$303,214.54	45.12	13.16
State passenger	$246,368.53	36.66	10.70
Miscellaneous passenger	$122,458.22	18.22	5.32
Total	$672,041.29	100.	29.18
Grand Total	$2,303,516.44	.....	100.00

(3) Expenses, Less Taxes and Rentals, Undivided Between State and Interstate.

All freight expense, including miscellaneous	$1,010,643.65
All passenger expense, including miscellaneous	$516,589.98

	Freight.	Passenger.
Percentages of expense to earnings	61.95%	76.87%

221 (4) Taxes and Rentals.

Freight	$119,017.87
Passenger	$58,465.49
Total	$177,483.36

(5) State Earnings and Expenses.

	Freight.	Passenger.
State earnings above (par. 2) shown are	$277,416.52	$246,368.53
Expenses of state business	$171,910.48	$189,381.89
Leaving	$105,506.04	$56,986.64
Less taxes and rentals	$20,244.94	$21,433.45
Leaving	$85,261.10	$35,553.19

Deduct extra cost of state business freight estimated at 50%, passenger 25%	$66,590.77	$27,482.59
Leaving	$18,670.33	$8,070.60
Deduct diminution in earnings if the state freight rates in question had been charged	$20,222.85	.....
Leaving as surplus	Def. $1,552.52	$8,070.60

(6) Valuation.

Valuation of property in state is $20,894,229.93, of which 12.04% is assignable to state freight and 10.70% to state passenger business	$1,257,832.64	1,117,841.30
Six per cent upon this part for the period covered is	$75,469.96	67,070.48

(7) Return on Value.

In the way of a return upon the assignable value found in subdivision 6, the surplus shown in subdivision 5 is	Nothing %	0.72%

(8) Interest Charge.

The actual interest charge paid, divided in the assignable proportions shown in subdivision 6, is	$62,439.68	$55,490.41

222 (G) CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY.

(1) Period Covered.

The representative period taken by the experts upon both sides as to this company *are* for the year ending June 30, 1908, and in that period the earnings and expenses were as set forth in subdivisions (1) and (2).

(2) Earnings and Percentages.

Character.	Amount.	Per cent of all freight earnings.	Per cent of all earnings.
Interstate freight	$6,454,699.87	78.75	52.40
State freight	$1,580,529.64	19.28	12.83
Miscellaneous freight	$161,579.41	1.97	1.31
Total	$8,196,608.92	100.00	66.54

		Per cent of all passenger earnings.	
Interstate passenger	$1,777,788.27	43.15	14.43
State passenger	$1,611,702.92	39.11	13.09
Miscellaneous passenger ...	$731,021.89	17.74	5.94
Total.....	$4,120,513.08	100.	33.46
Grand Total.....	$12,317,122.00	.....	100.

(3) Expenses (Less Taxes and Rentals) Undivided Between State and Interstate.

All freight expense, including miscellaneous.....	$6,793,610.60
All passenger expense, including miscellaneous.....	$3,527,311.81

	Freight.	Passenger.
Percentages of expenses to earnings.....	82.88	85.60

223 (4) Taxes and Rentals.

Freight	Cr. $12,235.30
Passenger	Cr. $6,152.58
Total.....	Cr. $18,387.88

(5) State Earnings and Expenses.

	Freight.	Passenger.
State earnings above (par. 2) shown are.....	$1,580,529.64	$1,611,702.92
Expense of state business.....	$1,324,453.83	$1,489,746.71
Leaving.....	$256,075.81	$121,956.21
Less Taxes and rentals.....	Cr. $2,487.99	2,798.50
Leaving.....	$258,563.80	$124,754.71
Deduct extra cost of state business freight estimated at 50%, passenger 25%	$484,129.29	$158,205.70
Leaving.....	Def. $225,565.49	Def. $33,450.99
Deduct diminution in earnings if the state freight rates in question had been charged...	$112,533.71	$.....
Leaving.....	Def. $338,099.20	Def. $33,450.99

(6) Valuation.

Valuation of property in state is $53,172,907.83, of which 12.83% is assignable to state freight, and 13.09% to state passenger business	$6,822,084.07	$6,960,333.63
Six per cent upon this part for the period covered is	$409,325.04	$417,620.02

(7) Return on Value.

In the way of a return upon the assignable value found in subdivision 6, the deficit shown in subdivision 5 is	Nothing %	Nothing %

224 (H) KANSAS CITY, CLINTON & SPRINGFIELD RY. COMPANY.

(1) Period Covered.

The representative period taken by the experts upon both sides as to this company *are* for the year ending June 30th, 1908, and in that period the earnings and expenses were as set forth in subdivisions (1) and (2).

(2) Earnings and Percentages.

Character.	Amount.	Per cent of all freight earnings.	Per cent of all earnings.
Interstate freight	$116,893.60	68.27	41.04
State freight	$45,003.15	26.29	15.80
Miscellaneous freight	$9,319.58	5.44	3.27
Total	$171,216.33	100.	60.11
		Per cent of all passenger earnings.	
Interstate passenger	$41,145.00	36.22	14.45
State passenger	$47,646.80	41.95	16.73
Miscellaneous passenger	$24,797.39	21.83	8.71
Total	$113,589.19	100.	39.89
Grand Total	$284,805.52	.....	100.

(3) Expenses (Less Taxes & Rental) Undivided Between State and Interstate.

All freight expense, including miscellaneous	$98,988.29
All passenger expense, including miscellaneous	$138,384.77

	Freight.	Passenger.
Percentages of expenses to earnings	57.81%	121.83

225 (4) Taxes and Rentals.

Freight	$9,182.36
Passenger	$5,749.38
Total	$14,931.74

(5) State Earnings and Expenses.

	Freight.	Passenger.
State earnings above (par. 2) shown are	$45,003.15	$47,646.80
Expense of state business	$26,024.02	$58,052.41
Leaving	$18,979.13	Def. $10,405.61
Less taxes and rentals	$2,414.04	$2,411.86
Leaving	$16,565.09	Def. $12,817.47
Deduct extra cost of state business freight estimated at 50%, passenger 25%	$8,483.30	$4,760.44
Leaving	$8,081.79	Def. $17,577.91
Deduct diminution in earnings if the state freight rates in question had been charged	$2,970.21	.....
Leaving	$5,111.58	Def. $17,577.91

(6) Valuation.

Valuation of property in state is $2,380,222.48, of which 15.80% is assignable to state freight, and 16.73% to state passenger business	$376,075.15	$398,211.22
Six per cent upon this part for the period covered is	$22,564.51	$23,892.67

(7) Return of Value.

In the way of a return upon the assignable value found in subdivision 6, the surplus shown in subdivision 5 is	1.36%	Nothing %

(8) Interest Charge.

The actual interest charge paid, divided in the assignable proportions shown in subdivision 5, is	$23,881.78	$25,287.48

226 (I) CHICAGO GREAT WESTERN RAILWAY COMPANY.

(1) Period Covered.

The representative period taken by the experts upon both sides as to this company *are* for six months, ending Dec. 31, 1907, and in that period the earnings and expenses were as set forth in subdivisions (1) and (2).

(2) Earnings and Percentages.

Character.	Amount.	Per cent of all freight earnings.	Per cent of all earnings.
Interstate freight	$224,169.58	86.02	57.39
State freight	$29,129.36	11.18	7.45
Miscellaneous freight	$7,280.24	2.80	1.86
Total	$260,579.18	100.	66.70
		Per cent of all passenger earnings.	
Interstate passenger	$72,360.87	55.62	18.53
State passenger	$38,105.03	29.28	9.75
Miscellaneous passenger	$19,643.99	15.10	5.02
Total	$130,109.89	100.	33.30
Grand Total	$390,689.07	.....	100.

(3) Expenses (Less Taxes and Rentals) Undivided Between State and Interstate.

All freight expense, including miscellaneous..... $198,887.69
All passenger expense, including miscellaneous..... $126,355.88

	Freight.	Passenger.
Percentages of expenses to earnings.....	76.33%	97.11%

227 (4) Taxes and Rentals.

Freight	$12,294.18
Passenger	11,312.16
Total	$23,606.34

(5) State Earnings and Expenses.

	Freight.	Passenger.
State earnings above (par. 2) shown are	$29,129.36	$38,105.03
Expenses of state business	$22,235.64	$36,996.98
Leaving	$6,893.72	$1,108.05
Less taxes and rentals	$1,374.49	$3,312.25
Leaving	$5,519.23	Def. $2,204.20
Deduct extra cost of state business, freight estimated at 50%, passenger 25%	$9,347.72	$6,090.35
Leaving	Def. $3,828.49	Def. $8,294.55
Deduct diminution in earnings if the state freight rates in question had been charged	$1,893.41	.....
Leaving	Def. $5,721.90	Def. $8,294.55

(6) Valuation.

Valuation of property in state is $3,605,236.38, of which 7.45% is assignable to state freight, and 9.75% to state passenger business	$134,295.06	$175,755.27
Six per cent upon this part for the period covered is	$8,057.70	$10,545.32

(7) Return of Value.

In the way of a return upon the assignable value found in subdivision 6, the surplus shown in subdivision 5 is	.....%	.....%

(8) Interest Charge.

The actual interest charge paid, divided in the assignable proportions shown in subdivision 6, is	$7,164.08	$9,375.81

228 22. If it should be assumed that the state experts correctly divided miscellaneous earnings as between state and interstate, which they did not do, still the fair and reasonable sum to be charged against the state part of these miscellaneous freight and passenger earnings is the revenue proportion of the entire freight and passenger expense plus a minimum extra cost for miscellaneous freight and for miscellaneous passenger. When this is done it clearly appears that even without an allowance for extra cost, the

result could not be changed if the findings already made as to state freight and passenger had included the miscellaneous, or had the miscellaneous of each class been separately considered. In no case would there be any fair return. If miscellaneous were considered separately, or if considered with freight and passenger respectively, the result would not be effected. This clearly appears from a tabulation now made as to each company with the exception of the St. Louis and Hannibal Ry. Company and the Kansas City, Clinton and Springfield Ry. Co., which are omitted for the reason that the state compiled and submitted no figures for these roads, showing: (*a*) The state experts' division of miscellaneous, though in fact it is too favorable to the state. (*b*) A deduction from earnings of the percentage proportion of expenses to earnings as done in Smyth v. Ames, 169 U. S. 466, which is the same as the revenue basis. (*c*) The minimum extra cost now found of doing the state over interstate being a mere fraction less than, and practically the same as, found as to the strictly freight and passenger. (*d*) The proportion that state's part of the miscellaneous was of all earnings, and the amount of return to which the company was entitled at six per cent interest upon that proportion of the value of the entire property as hereinbefore and now found to be fair, reasonable and just.

229 (1) St. Louis and San Francisco Railroad Company.

	Freight.			Passenger.		
	Amount.	% of all freight.	% of all earnings.	Amount.	% of all pass.	% of all earnings.
Miscellaneous state earnings	$17,953.25	00.62	00.44	$125,704.84	10.74	3.10
Less revenue proportion of expense 00.62% freight and 10.74% passenger	$11,177.44			$104,695.30		
Leaving	$6,775.81			$21,009.54		
Less increased cost freight 50%, passenger 25%	$5,588.72			$22,713.23		
Leaving	$1,187.09			Def. $1,703.69		
Less Taxes and Rentals	$697.20			$4,186.41		
	$489.89			Def. $5,890.10		
Amount due at 6% interest on portion of value assignable to the state part of the traffic	$4,041.74			$28,475.86		
Total Deficit..	$3,551.85			$34,365.96		

230 (2) Atchison, Topeka and Santa Fe Railway Company.

	Freight.			Passenger.		
	Amount.	% of all freight.	% of all earnings.	Amount.	% of all pass.	% of all earnings.
Miscellaneous state earnings	$4,608.35	00.22	00.17	$51,320.16	7.48	1.86
Less revenue proportion of expense 00.22% of freight and 7.48% passenger.	$3,042.02			$42,798.11		
Leaving	$1,566.33			$8,522.05		
Less increased cost freight 50%, passenger 25%.....	$1,521.01			$9,726.84		
Leaving	45.32		Def.	1,204.79		
Less Taxes and rentals	71.20			811.88		
Def..	25.88		Def.	2,016.67		
Amount due at 6% interest on portion of value assignable to the state part of the traffic	$769.65			$8,420.90		
Total deficit...	$795.53			$10,437.57		

231 (3) Chicago, Rock Island and Pacific Railway Company.

	Freight.			Passenger.		
	Amount.	% of all freight.	% of all earnings.	Amount.	% of all pass.	% of all earnings.
Miscellaneous state earnings	$4,035.91	00.48	00.36	$22,620.48	8.28	2.04
Less revenue proportion of expense 00.48% of freight and 8.28% passenger.	$2,966.88			$26,300.06		
Leaving	$1,069.03		Def.	$3,679.58		
Less increased cost freight 50%, passenger 25%	$1,483.44			$5,907.98		
Leaving ..Def.	$414.41		Def.	$9,587.56		
Less Taxes and Rentals	356.29			1,740.08		
Def.	$770.70		Def.	$11,327.64		
Amount due at 6% interest on portion of value assignable to the state part of the traffic	$1,031.54			$5,845.37		
Total deficit...	$1,802.24			$17,173.01		

232 (4) Kansas City Southern Railway Company.

	Freight.			Passenger.		
	Amount.	% of all freight.	% of all earnings.	Amount.	% of all pass.	% of all earnings.
Miscellaneous state earnings	$7,533.64	00.85	00.72	$10,493.05	6.50	1.00
Less revenue proportion of expense 00.85% freight and 6.50% passenger.	$4,856.03			$9,193.12		
Leaving	$2,677.61			$1,299.93		
Less increased cost freight 50%, passenger 25%	$2,428.02			$2,107.35		
Leaving	249.59			Def. 807.42		
Less taxes and Rentals	$189.82			242.93		
	59.77			Def. $1,050.35		
Amount due at 6% interest on portion of value assignable to the state part of the traffic	$1,736.44			$2,411.73		
Total deficit ..	$1,676.67			$3,462.08		

233 (5) Missouri, Kansas and Texas Railway Company.

	Freight.			Passenger.		
	Amount.	% of all freight.	% of all earnings.	Amount.	% of all pass.	% of all earnings.
Miscellaneous state earnings	$3,547.90	00.22	00.15	$54,885.77	8.17	2.38
Less revenue proportion of expense 00.22% freight and 8.17% passenger.	$2,223.42			$42,205.40		
Leaving	$1,324.48			$12,680.37		
Less increased cost freight 50%, passenger 25%	$1,111.71			$9,505.26		
Leaving	212.77			$3,175.11		
Less taxes and Rentals	261.84			$4,776.63		
Def.	49.07			Def. $1,601.52		
Amount due at 6% interest on portion of value assignable to the state part of the traffic	$940.24			$14,918.48		
Total deficit ..	$989.31			$16,520.00		

234 (6) Chicago, Burlington and Quincy Railroad Company.

	Freight.			Passenger.		
	Amount.	% of all freight.	% of all earnings.	Amount.	% of all pass.	% of all earnings.
Miscellaneous state earnings	$31,743.33	00.39	00.26	$347,600.91	8.44	2.82
Less revenue proportion of expense 00.39% freight and 8.44% passenger.	$26,495.08			$297,705.12		
Leaving	$5,248.25			$49,895.79		
Less increased cost freight 50%, passenger 25%	$13,247.54			$66,666.19		
Leaving	Def. 7,999.29			Def. 16,770.40		
Less Taxes and Rentals	Cr. 47.72			Cr. 519.28		
	Def. $7,951.57			Def. $16,251.12		
Amount due at 6% interest on portion of value assignable to the state part of the traffic	$8,294.97			$89,968.56		
Total deficit	$16,246.54			$106,219.68		

235 (7) Chicago Great Western Railway Company.

	Freight.			Passenger.		
	Amount.	% of all freight.	% of all earnings.	Amount.	% of all pass.	% of all earnings.
Miscellaneous state earnings	$837.23	00.32	00.21	$6,777.18	5.21	1.73
Less revenue proportion of expense 00.32% freight, and 5.21% passenger.	$636.44			$6,583.14		
Leaving	$200.79			$194.04		
Less increased cost freight 50%, passenger 25%	$318.22			$1,541.54		
Leaving	Def. 117.43			Def. $1,347.50		
Less taxes and Rentals	39.34			589.36		
	Def. $156.77			Def. $1,936.86		
Amount due at 6% interest on portion of value assignable to the state part of the traffic	$227.13			$1,871.12		
Total deficit	$383.90			$3,807.98		

236 23. If the commodities affected by the Freight Act of 1907 are alone considered, irrespective of and separate from the earnings from other freight, the rates are plainly confiscatory, and not only fail to bring any return upon the portion of the property devoted to such use, but do not enable any complainant to meet operating expenses. The following tables are in this respect submitted as findings of the earnings of and expenses fairly chargeable to these commodities for a period which is representative.

(1) St. Louis & San Francisco.

For the three months representative period the result is:

The gross earnings upon the commodities affected by the Freight Act of 1907, for three months, are $56,699.26, or $226,797.04 for the year, which is 10.94% of all state freight earnings. Applying this to the state freight statement, there is the result:

All earnings from this class of state freight were for 3 months	$56,699.26
All state freight expenses were $382,405.32 for three months, and 10.94% thereof chargeable to these commodities	41,835.14
	$14,864.12
Diminution if the rates fixed by the Act of 1907 had been charged	11,389.27
	$3,474.85
10.94% of Extra cost at 50%, $130,246.94	$14,249.02
10.94% of Interest, $117,775.28	12,884.62
10.94% of Valuation, $132,091.26	14,450.78

237 (2) Atchison, Topeka & Santa Fe.

The gross earnings upon the commodities affected by the Freight Act of 1907, for six months are $47,137.00, or $94,274.00 for the year, which is 33.4% of all state freight earnings. Applying this to the findings as to state freight, there is this result:

All earnings from this class of state freight were for six months	$47,137.00
All state freight expenses were $96,085.30 and 33.4% thereof chargeable to these commodities	32,092.49
Leaving	$15,044.51
Diminution if the rates fixed by the Act of 1907 had been charged	$13,885.87
	$1,158.64
33.4% of Extra cost at 50%, $43,443.57	$14,510.15
33.4% of Interest, $17,934.56	5,990.14
33.4% of Valuation, $23,089.55	7,711.91

(3) CHICAGO, ROCK ISLAND & PACIFIC.

For the three months' representative period July, August and September, 1907, there was this result:

Revenue actually received on said commodities being 7.24% of total revenue actually received on all freight traffic in Missouri for said three months	$60,639.75
Operating expenses, taxes, rentals and hire of equipment applicable to said revenue for said three months arrived at as follows:	
Total operating expenses, taxes, rentals and hire of equipment, assigned to freight traffic $693,427.16. Proportion (7.24% based on revenue) assigned to commodities affected by maximum freight act of 1907	50,204.13
238 Net revenue on said commodities for said three mos.	$10,435.62
Deduct the diminution in revenue if said act of 1907 had been in effect	9,989.43
Leaving	$446.19
Deduct extra cost of transporting state freight traffic, assuming such extra cost to be 50%. Schedule 4 shows that 50% increased cost increases revenue percentage from 18.02% to 24.79%, an increase of 6.77% or 37.57%. 37.57% of 7.24% equals 2.72%. 2.72% of total operating expenses excluding taxes, rentals, etc., $618,100.58, equals	16,812.34
Deficit	$16,366.15

(4) KANSAS CITY SOUTHERN.

The gross earnings upon commodities affected by the Act of 1907 for six months on $14,014.31 or $28,028.62 for the year, which is 36.17% of all state freight earnings. Applying this to the state freight statement there is this result:

All earnings from this class of state freight were for six months	$14,014.31
All state freight expenses were $26,000.96 and 36.17% of this amount would be	9,404.55
Leaving	$4,609.76
Diminution if rates fixed by the Act of 1907 had been charged	2,957.58
	$1,652.18

239

36.17% of extra cost at 50%, $11,735.85	$4,244.86
36.17% of interest, $5,295.38	1,915.34
36.17% of valuation, $13,768.01	4,979.89

(5) St. Louis & Hannibal.

The gross earnings upon commodities affected by the Act of 1907 for one year are 33%, or $29,020.86. Applying this to the state freight statement there is this result:

All earnings from this class of freight were	$29,020.86
All state freight expenses were $76,348.95 and 33% of this amount is	25,195.15
Leaving	3,825.71
Diminution if rates fixed by the Act of 1907 had been charged	15,126.02
Deficit	11,300.31
33% of extra cost at 50%, $12,026.69	$3,968.81
33% of interest, $16,359.44	5,398.61
33% of valuation, $43,041.07	14,203.55

(6) Missouri, Kansas & Texas.

Gross earnings on commodities affected by the Act of 1907 for six months (at 33% of total state freight earnings) would be $91,547.45 or $183,094.90 for the year.

Applying this to the state freight statement there is this result:

All earnings from this class of freight were, for six months	$91,547.45
All state freight expenses were $192,155.42 and 33% of this amount would be	63,411.29
240 Leaving	$28,136.16
Diminution, if rates fixed by Act of 1907 had been charged	20,222.85
	$7,913.31
33% of extra cost at 50%, $73,879.86	$24,380.00
33% of interest, $62,439.68	20,605.09
33% of valuation, $75,469.96	24,905.09

(7) CHICAGO, BURLINGTON & QUINCY.

The gross earnings upon commodities affected by the Act of 1907 for one year were $526,532.72, which is 31.92% of all state freight earnings, for the year 1905.

Applying this to the state freight statement there is this result:

All earnings from this class of state freight were for one year (31.92% of $1,580,529.64)	$504,505.06
All state freight expense- were $1,322,165.90, and 31.92% of this amount is	422,035.35
Leaving	$82,469.71
Diminution, if the rates fixed by the Act of 1907 had been charged	117,388.07
Deficit	$34,918.36
31.92% of extra cost at 50%, $472,092.76	$150,692.00
31.92% of valuation, $409,325.04	130,656.55

(8) KANSAS CITY, CLINTON & SPRINGFIELD RAILWAY COMPANY.

The gross earnings upon commodities affected by the Act of 1907, for one year are $14,365.00. Since the figures of the company do not show miscellaneous freight earnings, they are estimated
241 at 31.92% of all state freight, based on C. B. & Q. figures, as the percentage is the smallest with that company. Applying this to the state freight statement there is this result:

Earnings from this class of state freight were, for one year	$14,365.00
All state freight expenses were $28,438.06 and 31.92% of this amount is	9,077.43
Leaving	5,287.57
Diminution, if rates fixed by the Act of 1907 had been charged	2,970.21
	$2,317.36
31.92% of extra cost at 50%, $8,483.30	$2,707.87
31.92% of interest, $23,881.78	7,624.06
31.92% of valuation, $33,846.76	10,803.89

Such an estimate as to this company is reasonable, in that this company is actually losing money upon all its business, so that a finding as to these matters is unnecessary.

(9) CHICAGO GREAT WESTERN.

Gross earnings on commodities affected by the Act of 1907 for three months were $7,817.28, or $31,269.12 for the year, which is 57.81% of all state freight earnings.

Applying this to the state freight statement, there is this result:

All earnings from this class of state freight were (earnings of 3 months $7,817.28 x 2)	$15,634.56
All state freight expenses were $23,610.13 and 57.81% of this amount would be	13,649.02
Leaving	$1,985.54

242

Diminution, if rates fixed by the Act of 1907 had been charged	1,777.34
	$208.20
57.81% of extra cost at 50%, $9,347.72	$5,403.92
57.81% of interest, $7,164.08	4,141.55
57.81% of valuation, $8,057.70	4,658.16

(10) OTHER COMPANIES.

As the cases of the other companies abide the result of that of some other case, a finding in this respect is unnecessary.

243 Afterwards, to-wit, on the 30th day of December, 1908, a Certificate of the Trial Judge was filed. Said Certificate is in words and figures as follows, to-wit:—

In the Circuit Court of the United States, Western District of Missouri, Western Division.

No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY
vs.
HERBERT S. HADLEY, Attorney General, and Others.

No. 2989.

THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
vs.
JOSEPH P. RICE and Others.

No. 2990.

THE ST. LOUIS SOUTH WESTERN RAILWAY COMPANY
vs.
JOSEPH P. RICE and Others.

No. 2991.

THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY
vs.
JOHN A. KNOTT and Others.

No. 2992.

THE ST. LOUIS, KANSAS CITY & COLORADO RAILROAD CO.
vs.
JOHN A. KNOTT and Others.

No. 2993.

THE KANSAS CITY SOUTHERN RAILWAY COMPANY
vs.
JOHN A. KNOTT and Others.

No. 2994.

THE ST. LOUIS & HANNIBAL RAILWAY COMPANY
vs.
JOHN A. KNOTT and Others.

No. 2995.

THE MISSOURI PACIFIC RAILWAY COMPANY
vs.
JOHN A. KNOTT and Others.

No. 2996.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY CO.
vs.
JOHN A. KNOTT and Others.

244 No. 2997.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY
vs.
JOHN A. KNOTT and Others.

No. 2998.

CHICAGO, BURLINGTON & QUINCY RAILWAY COMPANY
vs.
JOHN A. KNOTT and Others.

No. 2999.

QUINCY, OMAHA & KANSAS CITY RAILWAY COMPANY
vs.
JOHN A. KNOTT and Others.

No. 3000.

THE WABASH RAILWAY COMPANY
vs.
JOHN A. KNOTT and Others.

No. 3001.

THE ST. JOSEPH & GRAND ISLAND RAILWAY COMPANY
vs.
JOHN A. KNOTT and Others.

No. 3002.

KANSAS CITY, CLINTON & SPRINGFIELD RAILWAY COMPANY
vs.
JOHN A. KNOTT and Others.

No. 3003.

CHICAGO GREAT WESTERN RAILWAY COMPANY
vs.
JOHN A. KNOTT and Others.

No. 3004.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY
vs.
JOHN A. KNOTT and Others.

No. 3006.

THE CHICAGO & ALTON RAILWAY COMPANY
vs.
JOHN A. KNOTT and Others.

Certificate.

Heretofore this court by order made on the 5th day of March, 1906, referred each and all of the foregoing eighteen cases to F. L. Schofield, a Special Master, to take the evidence and report the same to this court, with certain findings, as will appear from the order now of record.

Later on the said Schofield proceeded with said hearing
245 and took certain evidence, much of it being oral testimony taken down by stenographers and duly transcribed, and other evidence being in the form of exhibits.

Later on this court by agreement of parties, to-wit, on the 13th day of June, 1908, made an order that the said cases should come on for trial October 5th, 1908, to the Court on the evidence thus taken by the said Special Master, Mr. Schofield, together with such

other and further evidence as might be submitted by the respective parties.

October 5th, 1908, the hearing of said cases was upon the application of the defendants continued until the 9th day of November, 1908, at which time the hearing of said cases was proceeded with and continued *with* until and including November 14th, 1908, at which time there was an adjournment of the hearing until December 14th, 1908, when the hearing was again resumed and proceeded with until the 30th day of December, 1908, when said hearing was concluded and each, all and every of the parties rested.

The said cases were heard and are to be determined only upon the evidence received by the court, consisting in part of the evidence taken before the Special Master, Mr. Schofield, and in part received by the court in open court, and there was no other or further evidence received by the court or offered by any party other than that hereinafter scheduled. And in the event of an appeal of any or all of the cases, the clerk will certify to said evidence, subject, however, to such rights as the parties may have under the laws and rules of the Appellate Court to designate what shall be certified up and what omitted.

The evidence so taken by the Special Master, returned and filed in open court, and offered in evidence as hereinbefore stated, is as follows:

Five volumes designated as in case No. 2998, marked Volumes I to V, both inclusive, and one volume designated, "2998, Chicago, Burlington & Quincy: Index and Exhibits." Also annual statements of the Chicago, Burlington & Quincy Railroad Com-
246 pany to the Railroad Commissioners for the years ending, respectively, June 30th, 1904, June 30th, 1905, June 30th, 1906, (three copies.)

Also four volumes returned designated as "2995: Missouri Pacific," marked respectively, volumes I to IV, inclusive, together with one volume marked "2995, Missouri Pacific Railway: Index and Exhibits." Also the tax return of the Missouri Pacific for June 1st, 1904, June 1st, 1905, the 26th Annual Report of the Missouri Pacific Railway, Exhibit 34, 36*b*, and 24, in case No. 2995. Also seven analytical sheets of the Missouri Pacific Railway upon form #1939, and seven analytical sheets of the Missouri Pacific Railway upon form #1941, and two analytical sheets of the Missouri Pacific Railway upon form #1940, in case No. 2995.

Also four volumes of testimony marked I to IV, inclusive, in case No. 3000, Wabash Railroad. Also one volume endorsed, "3000 Wabash Railroad: Index and Exhibits." Also exhibits marked in case No. 3000 and being designated "Exhibit 15," being the 15th and 17th Annual Report- of the Directors of the Wabash Railroad Company for the years ending June 30th, 1904, and June 30th, 1906, respectively. Also the 15th and 16th Annual Report- of the Directors of the Wabash Railroad Company for the years ending June 30th, 1904 and June 30th, 1905, respectively, each marked "Exhibit 16." Also the 16th and 17th Annual Reports of the Directors of the Wabash Railroad Company for the years ending

respectively, June 30th, 1905 and June 30th, 1906, each marked "Exhibit 17."

Also one volume returned by the Special Master marked "2989, Atchison, Topeka & Santa Fe Proceedings," as showing certain proceedings had before him the said Special Master.

All the evidence offered before the said Special Master and returned into court and used in these cases and all the proceedings had therein, are included in the papers thus specifically enumerated, each volume and document hereinbefore referred to being now identified by the endorsement thereon of the Trial Judge, "Smith McPherson, Judge."

247 And pursuant to the order of the court and by agreement of parties the said cases came on for trial to the Court, November 9th, 1908, and said trial was continued from time to time with certain adjournments until December 30th, 1908, when the trial of all the cases was concluded and the said cases by the Court taken under advisement. The evidence taken before the court in open court is contained in volumes identified as follows:

Volume I, marked filed by the clerk, December 30th, 1908, and further identified by the signature of Smith McPherson, Trial Judge. Volume II, marked filed by the Clerk December 30th, 1908 and further identified by the signature of Smith McPherson, Trial Judge. Volume III, marked filed by the Clerk December 30th, 1908, and further identified by the signature of Smith McPherson, Trial Judge. Volume IV, marked filed by the Clerk December 30th, 1908, and further identified by the signature of Smith McPherson, Trial Judge. Volume V, marked filed by the Clerk December 30th, 1908 and further identified by the signature of Smith McPherson, Trial Judge, said Volume V being made up of exhibits, which together with the exhibits hereinafter scheduled, each and all being marked filed by the Clerk December 30th, 1908, and further identified by the signature of Smith McPherson, Trial Judge, are all the exhibits offered in open court in the trial of said cases; the exhibits other than those in Volume V being as follows: Exhibits A, B, C, D, E, G, H, I, and Exhibits No. 54, 59, 7, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 4, and Exhibit "Douglas I".

And said cases hereinbefore entitled were heard and fully submitted to the Court on the evidence and the exhibits hereinbefore scheduled, and on no other evidence than that hereinbefore scheduled. And each, all and every of the parties before final submission after the introduction of the foregoing, by counsel in open court said no further evidence was desired or would be offered in the cases.

This certificate is now signed and ordered filed as of this date after the submission of the cases and all of them.

Done in open court this December 30th, 1908.

(Signed) SMITH McPHERSON, *Judge.*

248 Afterwards, to-wit, on the 30th day of December, 1908, the following order was filed and entered of record:

UNITED STATES OF AMERICA, *sct*:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. 3000.

THE WABASH RAILROAD COMPANY
vs.
JOHN A. KNOTT et al.

Also

In Equity.

RAILROAD COMPANIES
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Being Cases Numbered 2988, 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3001, 3002, 3003, 3004, and 3006.

Now on this day again come the parties by their solicitors. Thereupon hearing of evidence is concluded, whereupon both parties rest, and this case is fully submitted and is by the Court taken under advisement and the orders and decree herein will be rendered and entered of record as of this date.

(Signed) SMITH McPHERSON, *Judge*.

December 30, 1908.

249 Afterwards, to-wit, on the 21st day of January, 1909, the following order was filed and entered of record:—

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY
vs.
HERBERT S. HADLEY, Attorney General, and Others.

No. 2989.

THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
vs.
JOSEPH P. RICE and Others.

No. 2990.

THE ST. LOUIS SOUTH WESTERN RAILWAY COMPANY
VS.
JOSEPH P. RICE and Others.

No. 2991.

THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY CO.
VS.
JOHN A. KNOTT and Others.

No. 2992.

THE ST. LOUIS, KANSAS CITY & COLORADO RAILROAD CO.
VS.
JOHN A. KNOTT and Others.

No. 2993.

THE KANSAS CITY SOUTHERN RAILWAY COMPANY
VS.
JOHN A. KNOTT and Others.

No. 2994.

THE ST. LOUIS & HANNIBAL RAILWAY COMPANY
VS.
JOHN A. KNOTT and Others.

No. 2995.

THE MISSOURI PACIFIC RAILWAY COMPANY
VS.
JOHN A. KNOTT and Others.

No. 2996.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY CO.
VS.
JOHN A. KNOTT and Others.

250 No. 2997.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY
VS.
JOHN A. KNOTT and Others.

No. 2998.

CHICAGO, BURLINGTON & QUINCY RAILWAY COMPANY
VS.
JOHN A. KNOTT and Others.

No. 2999.

QUINCY, OMAHA & KANSAS CITY RAILWAY COMPANY
vs.
JOHN A. KNOTT and Others.

No. 3000.

THE WABASH RAILWAY COMPANY
vs.
JOHN A. KNOTT and Others.

No. 3001.

THE ST. JOSEPH & GRAND ISLAND RAILWAY COMPANY
vs.
JOHN A. KNOTT and Others.

No. 3002.

KANSAS CITY, CLINTON & SPRINGFIELD RAILWAY CO.
vs.
JOHN A. KNOTT and Others.

No. 3003.

CHICAGO GREAT WESTERN RAILWAY COMPANY
vs.
JOHN A. KNOTT and Others.

No. 3004.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY
vs.
JOHN A. KNOTT and Others.

No. 3006.

THE CHICAGO & ALTON RAILWAY COMPANY
vs.
JOHN A. KNOTT and Others.

Order.

Each of the foregoing causes came on for hearing this January 20, 1909, the parties appeared by counsel, and admitted that the term of office of Herbert S. Hadley as Attorney General had expired, and Elliott W. Major was the duly qualified and acting successor
251 and Attorney General of Missouri. He appeared in person, and by the consent of himself and all counsel in the cases, it is ordered that without any formal pleadings, Elliott W. Major, as At-

torney General of Missouri be and he is hereby substituted for and in the stead of Herbert S. Hadley, so that all pleadings against and on behalf of said Hadley shall apply to the substituted party as fully as if made against and for him.

(Signed) SMITH McPHERSON, *Judge.*

Afterwards, to-wit, on the 20th day of February, 1909, the following order was filed and entered of record, to-wit:—

In the Circuit Court of the United States, Western District of Missouri, Western Division.

No. 2988. Equity.

St. Louis & San Francisco Railroad Company
vs.
Herbert S. Hadley, et al.

And Equity Cases No. 2989, 2991, 2993, 2994, 2997, 2998, 3002, 3003.

Order.

Whereas, after the cases above numbered had been submitted and argued by agreement of all parties at the request of the Court James Peabody and F. P. Johnson, expert accountants for the railroad companies, and A. P. Taliaferro and T. A. Hamilton, expert accountants for the defendants, compiled statements showing the earnings, operating expenses, etc., for each of said railroad companies for periods of time as therein stated, and affixed a certificate to the effect that said statement in each case correctly shows the results on the various assumptions set forth therein, which said certificate was signed by all four of said expert accountants.

It is therefore ordered that each of said statements be filed and made of record herein.

Done in open court this February 20th, 1909.

(Signed) SMITH McPHERSON, *Judge.*

252 Afterwards, to-wit, on the 6th day of March, 1909, the following order was filed and entered of record, to-wit:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 2988.

St. Louis & San Francisco Railroad Company
vs.
Herbert S. Hadley et al.

And also Numbers 2989 to 3004, Inclusive, and 3006.

Order.

By consent of parties, in accordance with agreements heretofore made and not recorded, it is on this March 6th, 1909, ordered:

1. The answers heretofore filed by the Attorney General and Railroad Commissioners, to which replications were filed, shall be treated and adopted by the other defendants who heretofore demurred herein, as their answers duly replied unto.

2. All the evidence taken before the Special Master and in open court, regardless of the particular case in which it was offered, shall be regarded as having been taken and offered in each of the cases tried.

(Signed) SMITH McPHERSON, *Judge.*

We consent to the above order.

FRANK HAGERMAN,
Solicitor for Complainant.
E. W. MAJOR,
Att'y General;
SANFORD B. LADD,
JOHN KENNISH,
F. W. LEHMANN,
Solicitor- for Appearing and Answering Defendants.

253 In the Circuit Court of the United States, Western District of Missouri, Western Division.

No. 2988. Equity.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY
vs.
HERBERT S. HADLEY et al.

And Equity Cases No. 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004, 3006.

Findings of Fact.

Prior to the argument the Court requested counsel on both sides to submit requests for findings of fact. Complainants' counsel did this. Defendants' counsel have not done so. Complainants' requests have been considered, some of which are embodied within the following findings, and some are not.

The following are the findings of fact that the Court makes as based upon the evidence herein:

1. The complainants are the eighteen railroad companies owning and operating lines of railroad in Missouri, they doing all of the state and interstate railroad business therein, and all of them except the St. Louis & Hannibal Company having lines of railroad both within and without the state. That company is wholly within the state, extending from Hannibal, Missouri, to the south 120.61 miles. The Kansas City, Clinton & Springfield Company is a road of about 160 miles in length with 151.01 miles in the state. All
254 the other companies have lines extending into a number of other states, one of them extending into thirteen other states

and territories. These roads with their own lines and with their connecting carriers, carry all the traffic and do all the business, freight and passenger, within the state, whether of state or interstate character. The intrastate business is at all times herein referred to as state business. That part of the interstate business which neither originates within, nor has its destination within, but passes across the State of Missouri, is called trans-state business.

2. The same roadbed, locomotives, cars, and trains including all facilities, are used for both classes of business, state and interstate. It is not practicable to conduct the business in any other way. This is so both from the standpoint of the public and that of the companies. If state business were to be carried alone upon some cars and trains, and interstate alone upon others, the expenses would be enormously increased, and almost if not quite prohibitive, while the public would be subjected to delays, inconveniences, and great expense. By reason of all this the business cannot practically be separated.

3. Both from a geographical and railway standpoint Missouri is situated differently from the other states of the Union, there only being two or three other states that have a resemblance to it in these particulars, and each of them in a lesser degree. This is so because the Mississippi is its boundary on the east all the distance. From a railroad standpoint the Missouri River is its boundary line on the west, although physically the Missouri River is only the western boundary line from the northwest corner of the state about half way to the southwest corner. But at the half way point, namely, Kansas City, the river turns directly to the east, and continues its way to the Mississippi River. In its production, business, and commerce all that part of Missouri to the north of the Missouri River is practically like the south half of Iowa, the country districts producing large quantities of live stock and grain for the market, as well as much bituminous coal. The south half of Missouri is entirely different. The amount of grain and live stock is much less than in the north half of the state. But the south half has a large amount of timber, stone, lime, lead, zinc, iron, and fruits. St. Louis on the east is a city of nearly a million people, Kansas City on the west nearly half as many, while St. Joseph has more than one hundred and twenty-five thousand people. These three cities carry on large manufacturing interests. The grain, live stock, and
255 packing house interests at Kansas City and St. Joseph are enormous. For a third of a century or more for reasons which need not be repeated, rates from the East were fixed to the Mississippi River, and later on, from thence to the Missouri River. The interstate rates either in or out were the one plus the other. It was the same from the West. It was likewise the same for the trans-state business going in either direction. Such is the method existing to-day. This brought about the fact which for years has existed and exists to-day, that the short line of road between the two rivers fixes the freight rates. To illustrate, the Burlington road is the short line between the rivers, being 198 miles from Hannibal to St. Joseph, and the same distance, within a few miles, to Kansas City. The

roads between Kansas City and St. Louis, and there are four at least of them, including the Burlington, is an average distance of nearly 300 miles, but some of the roads being fifty miles or more farther between the points than the others. This brings about the fact that all freight rates between any one point on the one river and any point on the other river are the same as the rate from Hannibal to St. Joseph over the Burlington line. That is to say, the freight rates on any road regardless of distance are the same between St. Louis and either Kansas City or St. Joseph that they are between Hannibal and St. Joseph over the Burlington line. This has given the three cities of St. Louis, Kansas City, and St. Joseph great advantages over other points. Competent persons say that to change this system will work irreparable harm to the three cities named, as well as to all other places within the state, by driving both the jobbing and manufacturing business to seaboard points. As to this no finding is made nor opinion expressed because it is believed to be a matter of policy upon which this Court in these cases should express no opinion. As to the passenger rates, by reason of competition the fare is the same between Kansas City and St. Louis, the shorter line fixing the rates, thereby compelling the longer road to be at much expense without remuneration. This is likewise true as to all competitive points.

As to the foregoing question of rates and fares, there is no United States statute governing the same, and there is no Missouri statute upon the subject except the two statutes questioned by the bills, one dealing with certain commodities per car per distance, and the other fixing the passenger fares at two cents. Aside from these two statutes, and as to any bearing they have as to charges between the two rivers, the conditions named have been brought about and
256 exist today by reason of a long time custom and by reason of transportation, actual and probable, upon the two rivers.

Still further bearing on the question are the following facts: Joplin is a city in the southwestern part of the state of more than twenty-five thousand people. There are a number of towns adjacent thereto, giving that county (Jasper) a population of 200,000 people. It is a very large mining district of lead and zinc. Between Kansas City and Joplin three of complainants herein have railroads. The Missouri Pacific at all points between the said places is within the state. Each of the other two between said points is partly without the state, starting within and going out and coming back, thereby making it interstate business as to two of the roads between Kansas City and the Joplin district. Between Kansas City and St. Joseph, four roads do the business. The Missouri Pacific and Chicago Great Western is each part of the distance within the State of Kansas, while the Burlington and St. Joseph & Grand Island Company is each wholly within the State of Missouri between the two cities. Between St. Joseph and St. Louis two of complainants do practically all the business, which is very large in both passenger and freight. These are the Burlington and Missouri Pacific. Between said cities the Burlington line is wholly within the state. But the Missouri

Pacific line is partly within the State of Kansas, crossing the Missouri River at Atchison and coming back into the state at Kansas City. On the foregoing facts the finding is that the short line between two competitive points necessarily fixes the rate, and the Missouri statutory rates under the statutes in question fix the rates between the cities named. But this is so solely because of the geographical location of cities and railroads, and competition, and long time custom. It is not so either because of a statute or any judicial determination by any of the Courts of Missouri.

4. Pending this litigation each of the complainant companies made and delivered to defendants statements showing the earnings and expenses for certain periods, which statements have been taken by both sides as sufficiently illustrative of the situation for the determination of these cases. The companies extended to the state officers, defendants herein, acting by experts by them selected, the opportunity to examine the statements and the books, papers, vouchers, and records of the companies. The freight rate statute of 1907 as to commodities mentioned allowed greater rates than did the statute of 1905 assailed by the original bills of complaint herein,
and it was conceded at the trial that if the rates fixed by the
257 Act of 1907 were confiscatory, that those fixed by the Act of 1905 were likewise.

5. The parties were producing evidence and preparing their evidence for about one year with the aid of experts on each side. These experts were all men of high character and great proficiency as railroad accountants. The experts on each side were given the fullest opportunity and all the time desired to obtain the information and put the same in form in exhibits, schedules and reports, all of which are in evidence in the cases, supplemented by the oral testimony of each of the experts with reference to all of these things.

6. It was conceded by the experts that the companies fairly, accurately and honestly kept their books showing the facts in these findings set forth. The experts of the state and of the companies have thereby been enabled to present with certainty and precision all the earnings within the state, both state and interstate business. But obtaining and compiling this information by the experts has been at great expense of time and money. One exception to the foregoing is to be noted as to passenger fares for a short period of time after the two cent fare law became operative. By agreement of both sides in open court in June, 1907, this Court issued a temporary writ of injunction against the enforcement of the freight rate statute. The complainants asked for a temporary injunction against the enforcement of the two cent passenger fare statute. This Court held that the statute should be given a trial for five months and ascertain the result by actual operation. In preparing the order counsel, no doubt by inadvertence, fixed three months as the period for trial as to results. But by acquiescence of both sides, or if not, by delays with which the Court was not chargeable, such status remained for more than one year, and the cases were not actually brought on for trial until in November, 1908. But after the statute became operative in June, 1907, and this Court denied the tempo-

rary writ of injunction, the interstate passenger rates remained as they were for a period of about two months. During the time that condition prevailed parties both coming into and going out of Missouri on interstate journeys would buy tickets to the state line, thereby obtaining the benefit of the two cent fare for all distance within the state. It was not possible for the companies to show the truth as to the number of such trips, and therefore it is not possible for the Court to find just how much of the earnings were on account of such interstate trips. But the extent, whatever it was, would make an erroneous showing as to state earnings, though fav-
258 orable to defendants, because such earnings were of an interstate character. But even though for the short time a part of the business was thus carried on so that additional earnings were erroneously placed to the credit of the state, still the results are not changed, for the error was against, and not in favor of, complainants.

Freight earnings, both state and interstate, are made up from earnings of transportation and another item called "miscellaneous freight," composed of switching, demurrage, and storage charges, and track and equipment rentals. Passenger earnings are made up of passenger fares and miscellaneous, the latter covering mail, express, excess baggage, storage, rentals, and possibly some other terminal earnings.

No difference of consequence has arisen between the parties as to the expense of doing the entire business in the state. With reasonable certainty the expenses for doing the freight and passenger, including miscellaneous of each, can be and have been separated.

The earnings are known and fixed and in these findings stated to a certainty. But as to the expenses as between state and interstate business, there has been a controversy and such is the principal controversy in the cases. There is no known fixed or certain rule for determining how this separation of expenses shall be made. The same cannot be made with mathematical certainty. Complainants claim that the division should be made upon the revenue basis; defendants claim that it should be made upon the ton mile basis for freight, and passenger mile basis for passengers, classifying the miscellaneous earnings as and with freight and passenger earnings respectively. By the revenue basis is meant to assign such proportion of the total expense in the state on that class of business as the earnings of that class of state business bears to all the earnings state and interstate from the same class, or, which is the same thing, ascertain what the percentage of all expenses is of all earnings, then multiply that by the state earnings of any class, and thus obtain the sum to be assigned as state expense. The ton mile basis as to freight means the assignment as state freight expenses of any class of business such proportion of all state expense as the number of ton miles of state freight bears to the total ton miles of all freight hauled within the state. By the passenger mile basis is meant the assignment as state passenger expenses such proportion of all passenger expenses as the number of passengers in state business carried one mile bears
259 to the whole number of passengers state and interstate carried one mile.

For reasons stated in an opinion herein filed, the revenue basis has been and is adopted as the only logical basis to use in arriving at a correct conclusion. The one basis or the other as a whole must be adopted. Either side can make a better showing by adopting the one basis in part of the accounting, and the other basis for the other. Neither should be and is allowed to do this. As will presently appear, the state has attempted to do this in making its passenger earnings accountings.

7. Each basis for accounting has some defects, but they are minor and not controlling and do not change the result if the revenue basis is taken.

The expense of doing the state business over interstate is greater for carrying freight by at least fifty per cent., and at least twenty-five per cent. for carrying passengers. Therefore this extra cost must be added to the expenses after they have been ascertained so as to obtain the total expense. If the ton mile basis of division were adopted, the extra cost should also be added. This would require the use of another multiplier sufficient to bring the sum total of the state freight expense equal to that found herein, to actually represent the cost as shown by the evidence. Any apportionment of passenger expense upon the passenger mile basis would be unfair and unjust, although much more favorable to the companies than if made upon the revenue basis.

8. All things considered, the evidence shows the cost of doing the different classes of state business as between state and interstate apportioned upon the revenue basis with added extra cost brings a result in these findings stated, which is fair and representative and just. The Court finds, aside from the revenue basis, that the evidence shows the amount ascertained in each case as the expense and extra cost, is fair and justly represents the expense of doing each class of state business. The extra cost as to each complainant for doing the state business over interstate is more than fifty per cent. in case of freight, and more than twenty-five per cent. in case of passenger. This extra expense as thus found is considerably in excess of these figures and the figures used are adopted as the minimum. The sum total of this extra cost if ascertained according to the ton mile theory, would not be changed because it is a question of multiplication, and one multiplier or another must be used accordingly as the theory is adopted. The findings herein made on all the evidence represent in dollars the fair cost and expense fixed at a minimum. There has also been considered and found in each case such sum as would equal the diminution of earnings upon the commodities covered by the freight rate statutes of 1905 and 1907 if the rates thus fixed had been charged, as they would have been but for the temporary injunctions herein issued.

260

9. The evidence shows that each of complainants has regularly paid for many years interest on its bonds. There is no evidence to show that any of the railroad property within the State of Missouri has an undue amount of bonds or is unfairly bonded, and the evidence does not show that any of the bonds provide for interest in any sum greater than such bonds should carry. It does show that

most of the bonds are at the lowest rates of interest, and much less than the legal rate allowable in Missouri. In thus referring to interest, the St. Louis & Hannibal, and Kansas City, Clinton & Springfield companies are excepted.

10. After the adoption of the two cent fare statute, there was no substantial increase in travel. For a few weeks there was a small increase largely brought about by interstate passengers buying tickets to state lines, and in part by the novelty. What if any increase of travel occurred by reason of said two cent fare, would be a mere approximation. It has not been substantial, and there is no reason to believe that any such increase will be brought about in the future by a two cent fare.

11. The values of the railroad properties in the State of Missouri are found, in the cases tried, to be as follows:

	Miles.	Value.	Value per mile.
St. Louis & San Francisco.	1,688.89	$61,238,414.70	$36,259.00
Atchison, Topeka & Santa Fe	348.31	15,091,212.00	43,326.00
Chicago, Rock Island & Pacific	515.48	19,102,507.59	37,058.00
Kansas City Southern	174.48	8,039,084.40	46,075.00
St. Louis & Hannibal	120.61	1,143,077.02	9,477.00
Missouri, Kansas & Texas	506.21	20,894,229.93	41,276.00
Chicago, Burlington & Quincy	1,136.34	53,172,907.83	46,793.00
Kan. City, Clinton & Springfield	151.01	2,380,222.48	15,762.00
Chicago Great Western	84.43	3,605,236.38	42,701.00

With the exceptions hereinafter stated, the above valuations of the properties of said nine companies as fixed, are in fact practically the same as those fixed by the state assessing board for the purpose of taxation. But aside and apart from the valuations thus fixed by the state board, these findings are that upon the whole evidence said properties are at least of the values above fixed. The evidence
261 shows that included in such sums the state board after making certain valuations under the heading of "all other property" fixed certain valuations, which when added give the totals as above. In argument it was contended that "all other property" included franchise values. This is not deemed important because it is difficult to see wherein steam railroad property like those involved, can have a franchise value. But waiving that, any franchise value that the state board could have considered, was necessarily so small a per cent. of the total valuations fixed by the state board as to make no appreciable difference in the result of these cases, because if altogether admitted the remaining value is such that no road could obtain a return to which it is herein found to be entitled. But if the property has a franchise value for taxation, it also has such valuation as an earning power, or, rather, upon which returns should be made. In fixing the valuations above set forth there have been con-

sidered the immense terminal values of most of the roads, the amount of stock and bonds outstanding, what it would cost to duplicate the properties both with and without terminals in the large cities, and all the evidence bearing on present values, and in fixing said valuations the sums found are the minimum valuations, the properties being worth at least the sums thus fixed.

The foregoing valuations are the same as fixed by the state assessing boards except as to the property of the St. Louis & Hannibal and of the Kansas City, Clinton & Springfield in the state, which are found to be worth sixty-six and two-thirds per cent. of the valuations of the state boards.

12. The interest obligations except as already stated are just and reasonable and should be paid in full with some dividends to the stockholders in addition. However, and entirely aside from the question of interest, the rates and earnings should in any event be such as to produce a fair return upon the valuations hereinbefore fixed.

And such earnings should be on the property within the state as would be equivalent to six per centum per annum, that per cent. being a fair return upon such valuations.

13. About the same time the two cent fare statute became operative, passes and other forms of reduced and free transportation, were abolished. Since that time they have not been given nor used except in cases of employés actually employed. The passen-
262 ger earnings were thereby increased, but such increase was not more than approximately one per cent.

14. After the arguments were concluded at the request of the Court, and with the consent of the parties, two experts upon each side, two selected by the railways and two by the defendants, worked with the Court for something more than one week. These experts were the same gentlemen representing their respective sides who had done much of the work in preparing the cases for the respective sides for hearing. The Court requested these experts to take the numerous tables and tabulate them already in evidence and to confine themselves wholly to that which had been introduced in evidence in the cases, and to make therefrom a new table for each of the nine cases showing the earnings and the expenses chargeable to each class of earnings according to the respective theories covered by counsel in the arguments. The Court further requested said four experts after preparing said new tables that if they agreed, to affix their signatures thereto. This they did below a certificate reciting that the statement of earnings, operating expenses, etc., as to each particular road for the time therein given, correctly shows the results on the various assumptions set forth therein. Said nine statements were by order of this Court, February 20, 1909, ordered filed and made of record in the cases. The said nine statements are now and here referred to, and are made part hereof. Each of said nine statements is found by the Court to be correct upon the respective theories presented. But the theory entitled as the "state's basis" is rejected for the reason that said statement improperly divides miscellaneous earnings, placing an undue proportion to

the benefit of the state. And said basis improperly makes a division of expense upon the ton mile and passenger mile basis and does not allow a sufficient amount as extra cost of doing state business, and the same does not allow enough for the value of the property in that it deducts all sums included "all other property" multiplied by three.

If the companies had been permitted to charge the amounts per passenger per mile which they did charge and receive prior to the two cent passenger fare statute, they would have received in addition to that which they did receive by reason of the statute and by reason of the temporary injunction being denied for earnings within the state for a period of twelve months last preceding the submission of the cases, the following sums: (Interstate, however, not controlled by statute, but by changed conditions.)

263

Name of road.	State passengers.	Interstate passengers.
St. L. & S. F. R. R.	$666,008.72	$509,730.63
A. T. & S. F. R. R.	30,885.52	66,271.03
C. R. I. & P. Ry. and St. L. K. C. & C. Ry.	124,469.14	111,178.60
K. C. So. Ry.	7,044.49	27,260.75
St. L. & H. Ry.	37,275.38	145.23
M. K. & T. Ry.	140,593.46	63,815.12
K. C. C. & S. Ry.	14,654.57	10,846.91
C. B. & Q. R. R.	394,878.77	261,556.41
C. G. W. Ry.	49,459.47	34,621.62

In the case of the St. Louis & San Francisco there were included in expenses sums paid as rentals under a lease given by the Kansas City, Fort Scott & Memphis Railway Company whose common stock is owned by it which operates the company under a lease requiring it to pay to the holders of preferred stock of the Fort Scott & Memphis Company, as a rental, a sum equal to four per cent annual dividends. This lease has been in force several years and is a fair one, and such rental has been treated as an operating expense, and is not included in fixed charges. And the court finds that it is an operating expense. But even if it were a fixed charge, it is not material as the result would not be changed even though the rentals were carried into the fixed charge account. This is so because the amounts carried into state freight expense *is* only $8,428.56 and interstate passenger expense, $7,443.68.

15. In the statements hereinbefore referred to made and signed by the four experts, while they correctly set forth the figures on both the revenue theory and the ton and passenger mile theory the placing of the miscellaneous earnings of the passenger business is arbitrarily fixed and does not at all proceed upon the passenger mile basis, but for that the revenue basis is taken and fixed. Such earnings are arbitrarily divided without reference to the facts, the result being the state earnings and especially passenger, are fixed much higher than the actual earnings. Said division instead of following

defendants' theory of the ton mile and passenger mile basis, is upon the revenue basis from which it is seen that this would be a splitting of theories. But from this and from all the evidence it is plain that even the ton and passenger mile basis theory cannot be worked out without showing a loss, to prevent which an arbitrary change of account must be made as to the miscellaneous business. Even in making this arbitrary change the revenue basis is used, and yet the revenue division of expenses insisted upon by complainants is said
264 not to be recognized. This is utterly illogical and unfair, and does not represent the true facts as to whether such earnings are made at a loss, and there is no reliance whatever to be placed in such method of accounting. In so finding no reflection whatever is made upon the experts for the state, because as before found they are men of the highest character and learning and highly skilled in accounting and with a proper basis for such accounting their work is perfect. And from their own statements upon the basis adopted herein for making such accounting by the Court, the freight business for the period mentioned would have been done at a loss if the statutory rates had been observed, and the passenger business was done at a loss under the two cent fare statute.

16. As to each of the nine companies whose cases have been submitted, the earnings and expenses and all other items are different in amount. So with the returns upon value to which the company is entitled. But in no event in any of the cases tried would the freight earnings, after making the deductions herein found result in a return to any company of more than three per cent. With nearly every company an actual deficit is shown if the 1907 statute had been in force. So under the two cent fare statute a deficit as to nearly all of the companies, and not more than two per cent. in case of any company. If the freight and passenger business should be combined with the miscellaneous of each class, there would be a deficit as to some and not to exceed three per cent. as to any of the others. In arriving at these conclusions and in adopting the tabulations herein set forth an account has been taken of all earnings, state and interstate, freight and passenger, and miscellaneous; the proportion which state and interstate freight and passenger exclusive of miscellaneous bear to all state and interstate, miscellaneous included, and that which they bear to all the earnings of the state; of miscellaneous freight and miscellaneous passenger earnings, undivided as between state and interstate, with the proportion they are of all earnings, freight and passenger; of all expenses divided as between all kinds of freight and passenger business, including miscellaneous, but not divided as between state and interstate; of the deductions to be made from all state freights not including miscellaneous of such proportion of expenses of all freight and passenger respectively as the freight and passenger earnings exclusive of miscellaneous bear to all earnings; of the deduction of the extra cost; of the diminution of freight earnings if the freight rate statute had been observed; of the
265 value of that portion of the property assignable to the particular traffic. This value is found by taking for each class of business of the entire value of the property in the state, such pro-

portion as the earnings on that portion of the business bear to all the earnings in the state. A statement so made as to each of the companies whose cases have been submitted is as follows:

17. The periods taken are representative taken by the experts upon both sides, and were for the months set forth in the column headed "time." These tables do not follow the form taken by the experts in preparing exhibits to be introduced in evidence, nor do they follow the prepared form adopted by the four experts in making the nine statements hereinbefore referred to. An attempt has been made to abbreviate, but with the results the same as adopted by the experts. These are found to be correct as now to be set forth, and are adopted by the Court. If any error has crept into them, the Court will make proper correction upon his attention being called thereto after these findings have been filed, which can be readily done upon motion or suggestion. The tables adopted by the court now follow:

Interstate Freight.

Company.	Time Mo.	Amount.	% of all freight.	% of all earnings.
St. L. & S. F. R. R....	3	$2,214,002.82	76.94	54.68
A. T. & S. F. R. R....	6	1,872,915.00	90.05	67.72
C. R. I. & P. Ry.....	3	665,228.16	79.38	59.86
K. C. So. Ry.....	6	702,249.91	79.35	67.11
St. L. & H. Ry.....	12	51,735.05	36.25	24.61
M. K. & T. Ry.....	6	1,333,455.26	81.73	57.89
C. B. & Q. R. R.....	12	6,454,699.87	78.75	52.40
K. C. C. & S. Ry.....	12	116,893.60	68.27	41.04
C. G. W. Ry.....	6	224,169.58	86.02	57.39

State Freight.

Company.	Amount.	% of all freight.	% of all earnings.
St. L. & S. F. R. R.....	$577,192.84	20.04	14.26
A. T. & S. F. R. R.....	141,133.00	6.79	5.10
C. R. I. & P. Ry.....	150,953.68	18.02	13.58
K. C. So. Ry.....	38,748.76	4.38	3.70
St. L. & H. Ry.....	87,941.99	61.62	41.84
M. K. & T. R. R.....	277,416.52	17.01	12.04
C. B. & Q. R. R.....	1,580,529.64	19.28	12.83
K. C. C. & S. Ry.....	45,003.15	26.29	15.80
C. G. W. Ry.....	29,129.36	11.18	7.45

266 *Miscellaneous Freight.*

Company.	Amount.	% of all freight.	% of all earnings.
St. L. & S. F. R. R.....	$86,814.57	3.02	2.14
A. T. & S. F. R. R.....	65,833.56	3.16	2.38
C. R. I. & P. Ry.....	21,815.70	2.60	1.96
K. C. So. Ry.....	144,046.62	16.27	13.77
St. L. & H. Ry.....	3,044.11	2.13	1.45
M. K. & T. Ry.....	20,603.37	1.26	0.89
C. B. & Q. Ry.....	161,579.41	1.97	1.31
K. C. C. & S. Ry.....	9,319.58	5.44	3.27
C. G. W. Ry.....	7,280.24	2.80	1.86

Interstate Passenger.

Company.	Amount	% of all passenger.	% of all earnings.
St. L. & S. F. R. R.....	$368,687.43	31.49	9.11
A. T. & S. F. R. R.....	355,318.12	51.81	12.85
C. R. I. & P. Ry.....	113,524.21	41.53	10.22
K. C. So. Ry.....	89,504.58	55.47	8.55
St. L. & H. Ry.....	198.19	0.29	0.09
M. K. & T. R. R.....	303,214.54	45.12	13.16
C. B. & Q. Ry.....	1,777,788.27	43.15	14.43
K. C. C. & S. Ry.....	41,145.00	36.22	14.45
C. G. W. Ry.....	72,360.87	55.62	18.53

State Passenger.

Company.	Amount.	% of all passenger	% of all earnings
St. L. & S. F. R. R.....	$599,051.59	51.17	14.79
A. T. & S. F. R. R.....	104,370.19	15.22	3.77
C. R. I. & P. Ry.....	114,853.04	42.02	10.33
K. C. So. Ry.....	31,865.28	19.75	3.05
St. L. & H. Ry.....	52,667.38	78.04	25.05
M. K. & T. R. R.....	246,368.53	36.66	10.70
C. B. & Q. R. R.....	1,611,702.92	39.11	13.09
K. C. C. & S. Ry.....	47,646.80	41.95	16.73
C. G. W. Ry.....	38,105.03	29.28	9.75

Miscellaneous Passenger.

Company.	Amount.	% of all passenger	% of all earnings
St. L. & S. F. R. R.....	$203,077.28	17.34	5.02
A. T. & S. F. R. R.....	226,080.00	32.97	8.18
C. R. I. & P. Ry.....	44,980.08	16.45	4.05
K. C. So. Ry.....	39,973.54	24.78	3.82
St. L. & H. Ry.....	14,619.99	21.67	6.96
M. K. & T. Ry.....	122,458.22	18.22	5.32
C. B. & Q. R. R.....	731,021.89	17.74	5.94
K. C. C. & S. Ry.....	24,797.39	21.83	8.71
C. G. W. Ry.....	19,643.99	15.10	5.02

267 18. All Freight and Passenger Expenses, including miscellaneous, less taxes and rentals, and percentages to earnings, undivided as between State and Interstate.

Company.	Freight.	Passenger.	Taxes and rentals, freight.	Taxes and rentals, passengers.
St. L. & S. F. R.	1,802,813.26	974,816.61	112,452.04	38,979.63
A. T. & S. F.	1,382,738.65	572,167.20	32,361.50	10,854.04
C. R. I. & P.	619,199.73	317,633.62	74,227.43	21,015.44
K. C. So.	571,297.54	141,432.56	22,331.70	3,737.37
St. L. & H.	117,908.81	68,343.04	5,994.07	2,273.61
M. K. & T.	1,010,643.65	516,589.98	119,017.87	58,465.49
C. B. & Q.	6,793,610.60	3,527,311.81	12,235.30cr.	6,152.58cr.
K. C. C. & S.	98,988.29	138,384.77	9,182.36	5,749.38
C. G. W.	198,887.69	126,355.88	12,294.18	11,312.16

Company.	% of said expenses to earnings exclusive of taxes and rentals. Freight.	Passenger.	Same, including taxes and rentals. Freight.	Passenger.
St. L. & S. F. R. R...	62.64	83.26	3.91	3.33
A. T. & S. F. R. R....	66.48	83.43	1.55	1.58
C. R. I. & P. Ry.....	73.89	116.20	8.86	7.68
K. C. So. Ry.....	64.55	87.66	2.52	2.31
St. L. & H. Ry.....	82.61	101.27	4.19	3.37
M. K. & T. Ry.....	61.95	76.87	7.29	8.69
C. B. & Q. Ry.....	82.88	85.60	0.00	0.00
K. C. C. & S. Ry.....	57.81	121.83	5.36	5.06
C. G. W. Ry.....	76.33	97.11	4.71	8.68

The time of the foregoing tables is the same as in first table above.

19. The following nine tables show the state earnings and expenses, valuation, return on value, and interest charge of the said nine roads respectively whose cases have been submitted. The other cases are to be covered by decrees by agreement the same as certain decrees of the nine cases, all of which is of record.

268 St. Louis & San Francisco Railroad Company.

Period, Three Months.

State earnings and expenses.	Freight.		Passenger.	
State earnings	577,192.84		599,051.59	
State expenses	361,644.33		498,716.20	
Leaving.....	215,548.51		100,335.39	
Less taxes and rentals...	22,760.29		20,097.90	
Leaving.....	192,788.22		80,237.49	
Extra cost of doing state business, freight 50%, passenger 25%	131,425.08		53,907.36	
Leaving.....	61,363.14		26,330.13	
Diminution in earnings if the state rates in question had been charged.	11,389.27			
Leaving.....	49,973.87		26,330.13	
Valuation	.....	14.26%	.....	14.79%
Assignable proportion of value for representative period, and 6% interest thereon, is	130,988.97		135,857.42	

Return on value:				
(*a*) Actual return upon the assignable value found in subdivision above, the amount shown in first subdivision above is	.....	2.29%	.....	1.16%
(*b*) Same without allowance for extra cost.	.....	8.2%	.....	3.5%
Interest charge:				
Actual interest charge paid on assignable properties	116,792.45		121,133.27	

269 Atchison, Topeka & Santa Fe Railway Company.

Period, Six months.

State earnings and expenses.	Freight.		Passenger.	
State earnings	141,133.00		104,370.19	
State expenses	92,581.89		87,834.09	
Leaving.....	48,551.11		16,536.10	
Less taxes and rentals...	3,503.41		901.74	
Leaving.....	45,047.70		15,634.36	
Extra cost of doing state business, freight 50%, passenger 25%	41,859.55		17,947.71	
Leaving.....	3,188.15		2,313.35	(red ink) (deficit)
Diminution in earnings if the state rates in question had been charged.....	13,885.87		.....	
Leaving.....	10,697.72	(red ink) (deficit)	2,313.35	(red ink) (deficit)
Valuation:				
Assignable proportion of value for representative period, and 6% interest thereon	23,089.35	5.10%	17,068.16	3.77%

Return on value:				
(*a*) Actual return upon the assignable value found in subdivision above, the amount shown in first subdivision above is	..... nothing		..... nothing	
(*b*) Same without allowance for extra cost.	..... 8.%		..... 5.49%	
Interest charge:				
Actual interest charge paid on assignable properties	17,934.56		13,257.51	

270 The Chicago, Rock Island & Pacific Railway Company.

Period, Three Months.

State earnings and expenses.	Freight.		Passenger.	
State earnings	150,953.68		114,853.04	
State expenses	111,579.80		133,469.65	
Leaving.....	39,373.88		18,616.61	(red ink) (deficit)
Less taxes and rentals...	13,375.78		8,830.68	
Leaving.....	25,998.10		27,447.29	(red ink) (deficit)
Extra cost of doing state business, freight 50%, passenger 25%	41,919.82		17,501.61	
Leaving.....	15,921.72	(red ink) (deficit)	44,948.90	(red ink) (deficit)
Diminution in earnings if the state rates in question had been charged.	9,989.43		.....	
Leaving.....	25,911.15	(red ink) (deficit)	44,948.90	(red ink) (deficit)
Valuation:				
Assignable proportion of value for representative period, and 6% interest thereon	38,911.81	13.58%	29,599.34	10.33%

Return on value:				
(*a*) Actual return upon the assignable value found in subdivision above, the amount shown in first subdivision above is	..... nothing		..... nothing	
(*b*) Same without allowance for extra cost.	..... 2.47%		..... nothing	
Interest charge:				
Actual interest charge paid on assignable properties	24,907.02		18,946.21	

271 The Kansas City Southern Railway Company.

Period, Six Months.

State earnings and expenses.	Freight.		Passenger.	
State earnings	38,748.76		31,865.28	
State expenses	25,022.83		27,932.93	
Leaving.....	13,725.93		3,932.35	
Less taxes and rentals...	978.13		738.13	
Leaving.....	12,747.80		3,194.22	
Extra cost of doing state business, freight 50%, passenger 25%	11,711.60		5,346.15	
Leaving.....	1,036.20		2,151.95	(red ink) (deficit)
Diminution in earnings if the state rates in question had been charged.	2,957.58		.....	
Leaving.....	1,921.38	(red ink) (deficit)	2,151.93	(red ink) (deficit)
Valuation:				
Assignable proportion of value for representative period, and 6% interest thereon	8,923.38	3.70%	7,355.76	3.05%

Return on value:				
(*a*) Actual return upon the assignable value found in subdivision above, the amount shown in first subdivision above is.....	.....	nothing	.....	nothing
(*b*) Same without allowance for extra cost.	.....6.58%		.....	2.6%
Interest charge:				
Actual interest charge paid on assignable properties	5,295.38		4,365.11	

272 The St. Louis & Hannibal Railway Company.

Period, Twelve Months.

State earnings and expenses.	Freight.		Passenger.	
State earnings	87,941.99		52,667.38	
State expenses	72,655.40		53,334.91	
Leaving.....	15,286.59		667.53	(red ink) (deficit)
Less taxes and rentals...	3,693.55		1,774.32	
Leaving.....	11,593.04		2,441.85	(red ink) (deficit)
Extra cost of doing state business, freight 50%, passenger 25%	12,026.69		2,444.68	
Leaving.....	433.65	(red ink) (deficit)	4,886.53	(red ink) (deficit)
Diminution in earnings if the state rates in question had been charged.	15,126.02		.....	
Leaving.....	15,559.67	(red ink) (deficit)	4,886.53	(red ink) (deficit)
Valuation:				
Assignable proportion of value for representative period, and 6% interest thereon	28,694.05	41.84%	17,179.40	25.05%

Return on value:				
(a) Actual return upon the assignable value found in subdivision above, the amount shown in the first subdivision above is	..... nothing		..... nothing	
(b) Same without allowance for extra cost.	..... nothing		..... nothing	
Interest charge:				
Actual interest charge paid on assignable property	16,359.44		9,794.55	

273 Missouri, Kansas & Texas Railway Company.

Period, Six Months.

State earnings and expenses.	Freight.		Passenger.	
State earnings.....	277,416.52		246,368.53	
State expenses.....	171,910.48		189,381.89	
Leaving.....	105,506.04		56,986.64	
Less taxes and rentals...	20,244.94		21,433.45	
Leaving.....	85,261.10		35,553.19	
Extra cost of doing state business, freight 50%, passenger 25%.....	66,696.09		27,482.59	
Leaving.....	19,165.01		8,070.60	
Diminution in earnings if the state rates in question had been charged.	20,222.85		.....	
Leaving	1,057.84 (red ink) (deficit)		8,070.60	
Valuation:				
Assignable proportion of value for representative period, and 6% interest thereon	75,469.96	13.04%	67,070.48	10.70%
Return on value:				
(a) Actual return upon the assignable value found in subdivision above, the amount shown in first subdivision above is	..... nothing		.....	0.72%

(*b*) Same without allowance for extra cost.	.....	5.18%	.....	3.18%
Interest charge:				
Actual interest charge paid on assignable property	62,439.68		55,490.41	

274 Chicago, Burlington & Quincy Railroad Company.

Period, Twelve Months.

State earnings and expenses.	Freight.		Passenger.	
State earnings	1,580,529.64		1,611,702.92	
State expenses	1,324,453.83		1,489,746.71	
Leaving.....	256,075.81		121,956.21	
Less taxes and rentals..	2,487.99	cr.	2,798.50	cr.
Leaving.....	258,563.80		124,754.71	
Extra cost of doing state business, freight 50%, passenger 25%	484,129.29		158,205.70	
Leaving.....	225,565.49	(red ink) (deficit)	33,450.99	(red ink) (deficit)
Diminution in earnings if the state rates in question had been charged	112,533.71		.....	
Leaving.....	338,099.20	(red ink) (deficit)	33,450.99	(red ink) (deficit)
Valuation:				
Assignable proportion of value for representative period, and 6% interest thereon	409,325.04	12.83%	417,620.02	13.09%
Return on value:				
(*a*) Actual return upon the assignable value found in subdivision above, the amount shown in the first subdivision above is	.....	nothing	.....	nothing
(*b*) Same without allowance for extra cost.	.....	2.11%	.....	1.79%

Interest charge:				
Actual interest charge paid on assignable property	132,735.02		135,424.89	

275 Kansas City, Clinton & Springfield Railroad Company.

For Period of Twelve Months.

State earnings and expenses.	Freight.		Passenger.	
State earnings	45,003.15		47,646.80	
State expenses	26,024.02		58,052.41	
Leaving.....	18,979.13		10,405.61	(red ink) (deficit)
Less taxes and rentals...	2,414.04		2,411.86	
Leaving.....	16,565.09		12,817.47	(red ink) (deficit)
Extra cost of doing state business, freight 50%, passenger 25%	8,483.30		7,625.00	
Leaving.....	8,081.79		20,442.47	(red ink) (deficit)
Diminution in earnings if the state rates in question had been charged.	2,970.21		.....	
Leaving.....	5,111.58		20,442.47	(red ink) (deficit)
Valuation:				
Assignable proportion of value for representative period, and 6% interest thereon	22,564.51	15.80%	23,892.67	16.73%
Return on value:				
(*a*) Actual return upon the assignable value found in subdivision above, the amount shown in the first subdivision above is	.....	1.36%	.....	nothing
(*b*) Same without allowance for extra cost.	.....	3.61%	.....	nothing
Interest charge:				
Actual interest charge paid on assignable property	23,881.78		25,288.48	

276 Chicago Great Western Railway Company.

Period, Six Months.

State earnings and expenses.	Freight.		Passenger.	
State earnings	29,129.36		38,105.03	
State expenses	22,235.64		36,996.98	
Leaving.....	6,893.72		1,108.05	
Less taxes and rentals...	1,374.49		3,312.25	
Leaving.....	5,519.23		2,204.20	(red ink) (deficit)
Extra cost of doing state business, freight 50%, passenger 25%	9,347.72		6,090.35	
Leaving.....	3,828.49	(red ink) (deficit)	8,294.55	(red ink) (deficit)
Diminution in earnings if the state rates in question had been charged.	1,893.41		.....	
Leaving.....	5,721.90	(red ink) (deficit)	8,294.55	(red ink) (deficit)
Valuation:				
Assignable proportion of value for representative period, and 6% interest thereon	8,057.70	7.45%	10,545.32	9.75%
Return on value:				
(*a*) Actual return upon the assignable value found in subdivision above, the amount shown in the first subdivision above is	.....	nothing	.....	nothing
(*b*) Same without allowance for extra cost.	.....	2.69%	.....	nothing
Interest charge:				
Actual interest charge paid on assignable property	7,164.08		9,375.81	

277 20. The Court believes that the foregoing findings are all that are material and all that are necessary to make. However, if any party believes that any material finding of fact has been omitted, upon application of such party the same will be considered and made if deemed advisable. And likewise if any of the foregoing computations or figures have been erroneously made. But such application to be entertained must be made within thirty days from this date.

And each, all and every of the foregoing are made as the findings of the Court, and are now and here in open court this March 8th, 1909, ordered filed and made of record in said cases and all of them.

SMITH McPHERSON, *Judge.*

278 Afterwards, to-wit, on the 8th day of March, A. D. 1908, a findings of fact was filed.

Said findings of fact is in words and figures as follows:

279 Afterwards, to-wit, on the 22nd day of March, A. D. 1909, the same being a day of the regular November term of said court, a final decree was filed and entered of record.

Said final decree is in words and figures as follows:

280 In the Circuit Court of the United States, Western District of Missouri, at Kansas City.

No. 3000. Equity.

THE WABASH RAILROAD COMPANY, Complainant,

vs.

JOHN A. KNOTT, JOSEPH P. RICE, and FRANK A. WIGHTMAN, Railroad Commissioners of the State of Missouri; Herbert S. Hadley, Attorney General of the State of Missouri; Joseph Sanderson, J. S. Peppard, and Sidney Smith; H. R. Oglesby, Railroad Commissioner of the State of Missouri; Joseph M. Patterson, Charles E. Moss, and George Dodd, County Judges, and Arthur C. Warner, County Treasurer; Julius H. Lang and Charles A. Kirtley; and Elliott W. Major, Attorney General of the State of Missouri, Respondents.

Final Decree.

The above entitled case this March 8th, 1909, comes on for final decree upon the evidence and stipulations upon file and of record herein, the case having heretofore been fully argued and fully submitted and taken under advisement. And now at this time the Court being fully advised in the premises, the parties appearing by their respective counsel, for reasons stated in an opinion by the Trial Judge and findings of fact signed and filed herein, orders, adjudges and decrees:

1. The maximum freight rate laws of Missouri, of 1905 and 1907, and the passenger rate law of 1907, mentioned in paragraph 2 hereof,

and set forth in the original bill and amendments and supplements thereto, are unreasonable and confiscatory; do not afford the complainant any fair or reasonable return upon the value of its property, and to comply therewith would take the property of complainant without due process of law. None of the provisions thereof should or can be rightfully enforced against complainant, its officers, agents or employés. A finding of fact has been prepared and filed, and is hereby referred to as if made part hereof.

2. Defendants Elliott W. Major, Attorney General of the State of Missouri, John A. Knott, H. R. Oglesby, and Frank A. Wightman, Railroad Commissioners of the State of Missouri, and each of them, their agents, employés and successors, are hereby enjoined from enforcing, or attempting, directly or indirectly, by suit or in any other manner whatsoever, to enforce against complainant, its officers, agents, employés or servants, any of the provisions of, or penalties provided for in the following acts of the legislature of the State of Missouri:

281

First, an act approved April 14, 1905, entitled:

"An act to amend article IV, chapter 12 of the Revised Statutes of Missouri of 1899, entitled 'Railroad classification, charges, commissioners,' by adding a new section thereto, to be known as section 1195*a*."

Second, an act approved April 15, 1905, entitled:

"An act entitled 'An act to amend chapter 12 of the Revised Statutes of Missouri, Revision of 1899, entitled "Corporations, private," by repealing section 1194 of said Revised Statutes, being part of article IV of said chapter concerning railroad classification, charges, commissioners, and to enact in lieu thereof the following new sections providing for the regulation of freight charges by railroads and the recovery of penalties for the violation thereof.'"

Third, an act approved February 27, 1907, entitled:

"An act to repeal sections 1191 and 1192 of chapter 12, article 4, Revised Statutes of Missouri, 1899, entitled 'Railroad classification, charges, commissioners,' by striking out sections 1191 and 1192 and enacting the following new sections in lieu thereof to be known as sections 1191 and 1192 and 1192*a*."

Fourth, an act approved March 19, 1907, entitled:

"An act to repeal an act of the 43rd general assembly, approved April 15, 1905, entitled 'An act to amend chapter 12 of the Revised Statutes of Missouri, revision of 1899, entitled "Corporations, private," by repealing section 1194 of said Revised Statutes, being part of article IV of said chapter, concerning railroad classification, charges, commissioners, and to enact in lieu thereof the following new sections providing for the regulation of freight charges by railroads and the recovery of penalties for the violation thereof; and to repeal an act of the 43rd general assembly, approved April 14, 1905, entitled 'An Act to amend article IV, chapter 12, of the Revised Statutes of Missouri, 1899, entitled "Railroad classification, charges, commissioners," by adding a new section thereto, to be known as section 1195*a*, fixing the charges for carrying undressed stone, crushed rock and building or paving brick,' and to enact in lieu thereof cer-

tain new sections, to be known as sections 1194, 1194*a*-1, 1194*b*-1 and 1194*c*-1, providing for the regulation of freight charges by railroads and prescribing the punishment for a violation thereof, which new sections shall read as follows:"

Fifth, an act approved March 19, 1907, entitled:

"An Act to amend article 4, chapter 12, Revised Statutes of Missouri of 1899 by adding a new section thereto, to be known as section 1195*a*, and relating to freight charges and classifications."

282 3. The other defendants who are officers, and their successors, are likewise enjoined from enforcing or attempting to enforce any of said statutory enactments.

4. There is no evidence that either defendants Sanderson, Peppard, Smith, Lang, or Kirtley, has threatened or intended to institute any action or proceeding against complainant as averred in the bill of complaint, and the said bill of complaint and the amendments and supplement *is* upon that ground as to said defendants in this paragraph named, dismissed. If however, at any future time said defendants or either of them in this paragraph named, should take any action, or threaten or attempt to take any action under either or all of said statutes hereinbefore designated, then and in that case the complainant herein may apply to this Court by supplemental bill or otherwise as it may be advised for further orders in that behalf.

5. It is further ordered, adjudged and decreed that the defendants, or any of the-, when the circumstances have changed so that the rates fixed as aforesaid shall yield to complainant reasonable compensation for the services aforesaid, may apply to this Court by supplemental bill or otherwise, as defendants or either of them may be advised, for further orders in their behalf.

And complainant may at any time by supplemental bill or otherwise bring into the case any person, firm or corporation not expressly subject to this decree, who may attempt or threaten to take any action or institute any proceeding against complainant under any of said statutes hereinbefore designated, to the end that such orders or supplemental decrees may be entered as the facts and equity may warrant and require.

And the Court retains and reserves unto it jurisdiction over all the parties hereto, and all subjects matter herein not now
283 covered by the pleadings, to the end that such other and further orders and decrees may be made hereafter as may become necessary by reason of any changed condition as to the facts, equities or rights that may hereafter take place or arise.

6. The taxable costs of the case including those covered by orders of the Court, heretofore made or hereafter made on motions to tax or retax, and including printing bill of Buxton-Skinner Stationery Company, shall be paid as follows, to-wit:

The one half by complainant and the other half by the defendants to be recovered by execution to be issued by the Clerk of this Court upon application of any party in interest.

Done and ordered of record as of March 8th, 1909, in open court this March 22nd, 1909, at Kansas City, Missouri.

SMITH McPHERSON, *Judge.*

284 Afterwards, to-wit, on the 22nd day of March, 1909, a Motion to Modify Decree was filed. Said Motion is in words and figures as follows, to-wit:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 2988. Equity.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY
vs.
HERBERT S. HADLEY et al.

And Equity Cases No. 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004, 3006.

Motion.

Now comes complainant in each one of the above numbered cases, and separately moves the court to modify and change its opinion and decree in these respects:

1. To strike from the opinion paragraph 4 thereof because it is based upon a misconception, and is an erroneous statement of the law.

2. To strike from paragraph 11 of the opinion these words:

"It being a legislative act, and not a judicial one, this Court can not fix rates. If it could, two and one-half cent passenger rates would be fixed for the stronger roads, and three for the others. But that is for the legislature acting itself with experts, such as the State employed in these cases, or through a Commission with like assistance."

This, for the reason that it was no part of the duty of the court to so decide, and it is directly in conflict with the express findings of fact. At a two and a half cent rate the returns would not be sufficient compensation.

3. To strike from paragraph 11 of the opinion these words:

285 "Each party will pay the costs by such party made, except the compensation of the Master and Stenographer. The half of those will be paid by complainants, and the other half by respondents."

This, for the reason that it is contrary to the rules and principles of law and equity and to good conscience.

4. To modify the decree so far as it taxes any costs against complainant, and to re-tax the same, for that there is no reason in equity or good conscience to tax same against it.

FRANK HAGERMAN,
Solicitor for Complainant.

286 Afterwards, to-wit, on the 3rd day of April, 1909, an Amended Motion to Modify Decree was filed. Said Amended Motion is in words and figures as follows, to-wit:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 2988. Equity.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY
vs.
HERBERT S. HADLEY et al.

And Equity Cases Nos. 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004, 3006.

Amended Motion.

Now comes complainant in each and every one of the above entitled causes, and separately amends the motion heretofore filed to modify and change the opinion and decree in each and every one of the said causes, and thereupon further moves the court:

1. To set aside the said decree as entered March 22, 1909, as of March 8, 1909, so far as concerns those defendants who neither appeared nor demurred, nor adopted the answers of the railroad commissioners and attorney general, of which there are twenty-six in the eighteen cases. This, for the reason that the court erroneously made provisions for and against said defendants when they were not before it, and when complainants actually asked to dismiss as to them, to which, counsel for the said officers in open court consented. It is neither right nor just to enter a decree against persons not in court, nor can the court refuse complainant the right to dismiss as to them.

2. To set aside the portion of said decree dismissing the bill as to appearing and answering shippers, for that upon the findings and opinion, as well as upon the pleadings, the laws mentioned in paragraph 2 of the decree so entered as of March 8th, 1909, are
287 confiscatory and void as to the shippers and passengers, and those classes of persons represented by them. Those of them who defended adopted the answer and defense of the state officers. Each complainant is entitled to have the right involved duly established as against them. Because an injunction is found to be unnecessary as to them is no reason for dismissing the bill, and it is inconsistent to enter such dismissal and then attempt to hold jurisdiction against them in the future as if there had been some adjudication as to their rights.

3. To set aside the provision of said decree as to costs for that the attempt in the decree to cure the error already rendered in taxing the costs, is erroneous. In the original opinion the decision was that each party should pay the costs by such party made, except the compensation of the master and stenographer, half of which should be paid by complainants and the other half by defendants. In open court it was announced that such rule was adopted solely because the defendants were state officers and the state might not appropriate the amount necessary to meet these costs. The supreme

court has twice decided this is no excuse and no justification for taxing the costs against the other party. It was conceded by both parties that those shippers who adopted the defense of the state officers and were defended by them ought not to be compelled to pay any additional costs. This concession was agreed to by the court; yet, in the decree as now entered, this concession of both sides and the court is absolutely ignored. The only change made as to the costs is that one-half of all the costs shall be paid by each party. There is no legal excuse or justification to tax any of these costs to complainants; ample money has already been appropriated to the state officers for the purpose of paying the same, and even if it had not been so appropriated, this would have been no reason for making an order that complainant should pay costs.

FRANK HAGERMAN,
Solicitor for Complainants.

288 Afterwards, to-wit, on the 3rd day of April, 1909, a Notice was filed. Said Notice is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General, et al., Defendants.

And Equity Cases Nos. 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004 and 3006.

Notice.

To Herbert S. Hadley, Attorney General, et al., Defendants, and their attorneys of record:

You are hereby notified that complainants will, upon Saturday, April 3rd, 1909, in the federal court room at Kansas City Missouri, call up before the Honorable Smith McPherson, Judge of said court, the motion to modify and change the opinion and decrees in the above entitled causes heretofore filed, copy of which was delivered to defendants, and also the amended motion, copy of which is herewith delivered to you.

FRANK HAGERMAN,
Solicitor for Complainants.

Received copy of above notice and of the motion and amended motion therein referred to this 27th day of March, 1909.

SANFORD B. LADD,
Solicitor for Defendants.

289 Afterwards, towit, on the 17th day of April, A. D. 1911, the same being a day of the regular November term of said Court, an amended final decree was filed.

Said amended final decree is in words and figures as follows:

In the Circuit Court of the United States, Western Division of the Western District of Missouri, at Kansas City.

No. 3000.

WABASH RAILROAD COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General, et al., Defendants.

Amended Final Decree.

This case heretofore came on for hearing, the parties appearing by counsel, and was submitted upon the motion and amended motion to change and modify the decree of March 8, 1909, and the court being fully advised in the premises, now upon this 17th day of April, 1909, amends the said decree heretofore entered so that same shall read as follows:

The above entitled cause this March 8th, 1909, comes on for final decree upon the evidence and stipulations upon file and of record herein, the case having heretofore been fully argued and fully submitted and taken under advisement. And now at this time the court being fully advised in the premises, the parties appearing by their respective counsel, for reasons stated in an opinion by the trial judge and findings of fact signed and filed herein, orders, adjudges and decrees:

1. The maximum freight laws of Missouri of 1905 and 1907, and the passenger rate law of 1907, mentioned in para-
290 graph 2 hereof, and set forth in the original bill and amendments and supplements thereto, are unreasonable and confiscatory, do not afford the complainant any fair or reasonable return upon the value of its property, and to comply therewith would take the property of complainant without due process of law. None of the provisions thereof should or can be rightfully enforced against complainant, its officers, agents or employés. A finding of fact has been prepared and filed, and is hereby referred to as if made part hereof.

2. Defendants Elliott W. Major, Attorney General of the State of Missouri, John A. Knott, H. R. Oglesby and Frank A. Wightman, Railroad Commissioners of the state of Missouri, and each of them, their agents, employés and successors, are hereby enjoined from enforcing, or attempting, directly or indirectly, by suit or in any other manner whatsoever, to enforce against complainant, its officers, agents, employés or servants, any of the provisions of or penalties provided for in the following acts of the legislature of the state of Missouri:

First, an act approved April 14, 1905, entitled:

"An Act to amend article IV, chapter 12 of the Revised Statutes of Missouri of 1899, entitled 'Railroad classification, charges, commissioners,' by adding a new section thereto, to be known as section 1195*a*."

Second, an act approved April 15, 1905, entitled:

"An Act, entitled 'An Act to amend chapter 12 of the Revised Statutes of Missouri, revision of 1899, entitled "Corporations, private," by repealing section 1194 of said Revised Statutes, being part of article IV of said chapter concerning railroad classification—charges—commissioners, and to enact in lieu thereof the following new sections providing for the regulation of freight charged by railroads and the recovery of penalties for the violation thereof.'"

Third, an act approved February 27, 1907, entitled:

"An Act to repeal sections 1191 and 1192 of chapter 12, article 4, Revised Statutes of Missouri, 1899, entitled 'Railroad classification—charges—commissioners,' by striking out sections 1191 and 1192 and enacting the following new sections in lieu thereof, to be known as sections 1191 and 1192 and 1192*a*."

Fourth, an act approved March 19, 1907, entitled:

"An act to repeal an act of the 43rd general assembly, ap-
291 proved April 15, 1905, entitled 'An act to amend chapter 12 of the Revised Statutes of Missouri, revision of 1899, entitled "Corporations, private," by repealing section 1194 of said Revised Statutes, being part of article IV of said chapter, concerning railroad classification, charges, commissioners, and to enact in lieu thereof the following new sections providing for the regulation of freight charges by railroads, and the recovery of penalties for the violation thereof,' and to repeal an act of the 43rd general assembly, approved April 14, 1905, entitled 'An act to amend Article IV, chapter 12 of the Revised Statutes of Missouri, 1899, entitled "Railroad classifications, charges, commissioners," by adding a new section thereto, to be known as section 1195*a*, fixing the charges for carrying undressed stone, crushed rock and building or paving brick,' and to enact in lieu thereof certain new sections, to be known as sections 1194, 1194*a*-1, 1194*b*-1 and 1194*c*-1, providing for the regulation of freight charges by railroads and prescribing the punishment for a violation thereof, which new sections shall read as follows:"

Fifth, an act approved March 19, 1907, entitled:

"An act to amend article 4, chapter 12, Revised Statutes of Missouri of 1899, by adding a new section thereto, to be known as section 1195*a*, and relating to freight charges and classifications."

3. The other defendants who are officers, and their successors, are likewise enjoined from enforcing or attempting to enforce any of said statutory enactments.

4. There is no evidence that either defendant Sanderson, Peppard, Smith, Lang or Kirtley, has threatened or intended to institute any action or proceeding against complainant as averred in the bill of complaint, but they have adopted the answers of the Railroad Commissioners and Attorney General. The said bill of complaint

and the amendments and supplement to the extent and so far only as it seeks present injunctive relief against them, is upon that ground as to said defendants in this paragraph named, dismissed without prejudice. If, however, at any future time said defendants or either of them in this paragraph named, should take any action, or threaten or attempt to take any action under either or all of said statutes hereinbefore designated, then and in that case the complainant herein may apply to this court by supplemental bill or otherwise as it may be advised, for further orders in that behalf.

292 5. It is further ordered, adjudged and decreed that the defendants, or any of them, when the circumstances have changed so that the rates fixed as aforesaid shall yield to complainant reasonable compensation for the services aforesaid, may apply to this court by supplemental bill or otherwise, as defendants or either of them may be advised, for further orders in their behalf.

And complainant may at any time by supplemental bill or otherwise bring into the case any person, firm or corporation not expressly subject to this decree, who may attempt or threaten to take any action or institute any proceedings against complainant under any of said statutes hereinbefore designated, to the end that such orders or supplemental decree may be entered as the facts and equity may warrant and require.

And the court retains and reserves unto it, jurisdiction over all the parties hereto, and all subjects matter herein, not now covered by the pleadings, to the end that such other and further orders and decrees may be made hereafter as may become necessary by reason of any changed condition as to the facts, equities or rights that may hereafter take place or arise.

6. The taxable costs of the case including those covered by orders of the court, heretofore made or hereafter made on motion to tax or retax, and including printing bill of Buxton-Skinner Stationery Company shall be paid as follows, to-wit: The one-half by complainant and the other half by defendants who are Railroad Commissioners and the Attorney General, to be recovered by execution to be issued by the clerk of this court upon application of any party in interest.

7. Some of the defendants having announced their intention to appeal, it is now ordered that no appeal shall supersede the injunctive portions of this decree, but pending any such appeal the

293 complainants shall be permitted to charge the rates permitted by sections 1191 and 1192 of the Revised Statutes of Missouri, 1899, the same as if the Passenger Rate Act approved February 27, 1907, and herein held to be confiscatory, had not been passed. Complainant having by order herein of June 17, 1907, been required to temporarily adopt the rate fixed by said Passenger Rate Act, shall be and is hereby permitted, free from the interference of the parties and classes represented by them, who are hereby ordered not to interfere, to restore and put in force the rates authorized by said sections 1191 and 1192, this court reserving power and jurisdiction from

time to time to enforce, change and modify this paragraph of this decree, as well as to protect the complainant in being restored to the right of which said order temporarily deprived it.

8. This decree shall be binding upon and enforceable against the said defendants, not dismissed, their assistants, agents, attorneys and employés, and any class or classes of persons or officers represented by them.

SMITH McPHERSON, *Judge.*

294 Afterwards, to-wit, on the 15th day of March, 1911, declinations to join in appeal were filed. Said declinations are in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 3000.

THE WABASH RAILROAD COMPANY, Complainant,

vs.

JOHN A. KNOTT, H. R. OGLESBY, and FRANK A. WIGHTMAN, Railroad and Warehouse Commissioners; Elliott W. Major, Attorney General of the State of Missouri; Joseph M. Patterson, Charles E. Moss, and George J. Dodd, Judges of the County Court of Jackson County, Missouri; Arthur C. Warner, Treasurer of Jackson County, Missouri; Joseph Sanderson, J. S. Peppard, and Sidney Smith, and Julius H. Lang, and Charles A. Kirtley, Defendants.

To Joseph M. Patterson, Charles E. Moss and George J. Dodd, and Hugh C. Gilbert, Edward L. Martin and Edward E. Axline, as successors respectively to said Joseph M. Patterson, Charles E. Moss and George J. Dodd in the offices of judges of the County Court of said Jackson County; Arthur C. Warner and Overton H. Gentry, Jr., as successor to said Arthur C. Warner in the office of Treasurer of said Jackson County; Joseph Sanderson, J. S. Peppard, Sidney Smith, Julius H. Lang, and Charles A. Kirtley:

Each of you is hereby invited to join with the undersigned in a petition for an appeal in the above entitled cause to the Supreme Court of the United States, to reverse the decree in the above entitled cause, rendered on the 8th day of March, 1909, as
295 amended by the decree herein entered on the 17th day of April, 1909, or you will be deemed to have acquiesced in said decree as amended, and we shall present said petition for an appeal and prosecute said appeal without joining you as a party.

Said petition for an appeal will be presented to the said Circuit Court for allowance, at the court room of said court in Kansas City, Jackson County, Missouri, on Monday, the 6th day of

March, 1911, at 9 o'clock A. M., or as soon thereafter as said petition can be heard.

ELLIOTT W. MAJOR,
Attorney General of the State of Missouri;
JOHN A. KNOTT,
H. R. OGLESBY,
FRANK A. WIGHTMAN,
Railroad and Warehouse Commissioners, Defendants,
By ELLIOTT W. MAJOR,
Attorney General;
JOHN M. ATKINSON,
Assistant Attorney General;
SANFORD B. LADD,
Counsel for said Defendants.

Service of the above is accepted this 4th day of March, 1911, and we, the undersigned, severally decline to join in said petition for an appeal.

Witness- to Signatures:	Signatures.
	J. SIDNEY SMITH.
CALEB S. MONROE.	JOSEPH M. PATTERSON.
CALEB S. MONROE.	CHARLES E. MOSS.
PORTER B. GODARD.	H. C. GILBERT.
PORTER B. GODARD.	E. L. MARTIN.
PORTER B. GODARD.	E. E. AXLINE.
J. L. PEPPARD.	J. G. PEPPARD.

296 In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 3000.

THE WABASH RAILROAD COMPANY, Complainant,
vs.
JOHN A. KNOTT, H. R. OGLESBY and FRANK A. WIGHTMAN, Railroad and Warehouse Commissioners; Elliott W. Major, Attorney General of the State of Missouri; Joseph M. Patterson, Charles E. Moss and George J. Dodd, Judges of the County Court of Jackson County, Missouri; Arthur C. Warner, Treasurer of Jackson County, Missouri; Joseph Sanderson, J. S. Peppard, and Sidney Smith, and Julius H. Lang, and Charles A. Kirtley, Defendants.

To Joseph M. Patterson, Charles E. Moss and George J. Dodd, and Hugh C. Gilbert, Edward L. Martin and Edward E. Axline, as successors respectively to said Joseph M. Patterson, Charles E. Moss and George J. Dodd in the offices of judges of the County Court of said Jackson County; Arthur C. Warner and Overton H. Gentry, Jr., as successor to said Arthur C. Warner in the office of Treasurer of said Jackson County; Joseph Sanderson, J. S. Peppard, Sidney Smith, Julius H. Lang, and Charles A. Kirtley:

Each of you is hereby invited to join with the undersigned in a petition for an appeal in the above entitled cause to the Supreme

Court of the United States, to reverse the decree in the above entitled cause, rendered on the 8th day of March, 1909, as amended by the decree herein entered on the 17th day of April, 1909,
297 or you will be deemed to have acquiesced in said decree as amended, and we shall present said petition for an appeal and prosecute said appeal without joining you as a party.

Said petition for an appeal will be presented to the said Circuit Court for allowance, at the court room of said court in Kansas City, Jackson County, Missouri, on Monday, the 6th day of March, 1911, at 9 o'clock A. M. or as soon thereafter as said petition can be heard.

ELLIOTT W. MAJOR,
Attorney General of the State of Missouri;
JOHN A. KNOTT,
H. R. OGLESBY
FRANK A. WIGHTMAN,
Railroad and Warehouse Commissioners, Defendants,
By ELLIOTT W. MAJOR,
Attorney General;
JOHN M. ATKINSON,
Assisant Attorney General;
SANFORD B. LADD,
Counsel for Said Defendants.

Service of the above is accepted this 4th day of March, 1911, and we, the undersigned, severally decline to join in said petition for an appeal.

Witness to Signatures:
CALEB S. MONROE.
CALEB S. MONROE.
CALEB S. MONROE.
CALEB S. MONROE.

Signatures:
GEORGE J. DODD.
O. H. GENTRY, Jr.
ARTHUR C. WARNER.
JOSEPH SANDERSON.
CHARLES A. KIRTLEY,
By INGRAHAM D. HOOK,
His Attorney in Fact, Duly Authorized Hereto.

298 In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 3000.

THE WABASH RAILROAD COMPANY, Complainant,
vs.
JOHN A. KNOTT, H. R. OGLESBY and FRANK A. WIGHTMAN, Railroad and Warehouse Commissioners; Elliott W. Major, Attorney General of the State of Missouri; Joseph M. Patterson, Charles E. Moss and George J. Dodd, Judges of the County Court of Jackson County, Missouri; Arthur C. Warner, Treasurer of Jackson County, Missouri; Joseph Sanderson, J. S. Peppard, and Sidney Smith, and Julius H. Lang and Charles A. Kirtley, Defendants.

To Joseph M. Patterson, Charles E. Moss and George J. Dodd and Hugh C. Gilbert, Edward L. Martin and Edward E. Axline, as successors respectively to said Joseph M. Patterson, Charles E. Moss and George J. Dodd, in the offices of judges of the County Court of said Jackson County; Arthur C. Warner and Overton H. Gentry, Jr., as successor to said Arthur C. Warner, in the office of Treasurer of said Jackson County; Joseph Sanderson, J. S. Peppard, Sidney Smith, Julius H. Lang, and Charles A. Kirtley.

Each of you is hereby invited to join with the undersigned in a petition for an appeal in the above entitled cause to the Supreme Court of the United States, to reverse the decree in the above entitled cause, rendered on the 8th day of March, 1909, as amended by the decree herein entered on the 17th day of April, 1909,
299 or you will be deemed to have acquiesced in said decree as amended, and we shall present said petition for an appeal and prosecute said appeal without joining you as a party.

Said petition for an appeal will be presented to the said Circuit Court for allowance, at the court room of said court in Kansas City, Jackson County, Missouri, on Monday, the 6th day of March, 1911, at 9 o'clock A. M. or as soon thereafter as said petition can be heard.

ELLIOTT W. MAJOR,
Attorney General of the State of Missouri;
JOHN A. KNOTT,
H. R. OGLESBY,
FRANK A. WIGHTMAN,
Railroad and Warehouse Commissioners, Defendants.
By ELLIOTT W. MAJOR,
Attorney General;
JOHN M. ATKINSON,
Assistant Attorney General;
SANFORD B. LADD,
Counsel for said Defendants.

Service of the above is accepted this 27th day of February, 1911, we, the undersigned, severally decline to join in said petition for an appeal.

Witness to Signatures: WALTER S. WILSON.

Signatures: J. H. LANG.

300 Afterwards, to-wit, on the 15th day of March, 1911, the defendants' Assignment of Errors was filed. Said Assignment of Errors is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 3000.

THE WABASH RAILROAD COMPANY, Complainant.

vs.

JOHN A. KNOTT, H. R. OGLESBY, and FRANK A. WIGHTMAN, Railroad and Warehouse Commissioners; Elliott W. Major, Attorney General of the State of Missouri; Joseph M. Patterson, Charles E. Moss and George J. Dodd, Judges of the County Court of Jackson County, Missouri, Arthur C. Warner, Treasurer of Jackson County, Missouri; Joseph Sanderson, J. S. Peppard, and Sidney Smith and Julius H. Lang and Charles A. Kirtley, Defendants.

Assignment of Errors.

Now come John A. Knott, H. R. Oglesby and Frank A. Wightman, Railroad and Warehouse Commissioners, and Elliott W. Major, Attorney General of the State of Missouri, defendants in the above entitled cause, and aver that in the record and proceedings and decree in the above entitled cause, there is manifest error, in this:

1. The court erred in adjudging and decreeing, by its amended decree, that the maximum freight rate laws of Missouri of 1905 and 1907 are unreasonable and confiscatory and do not afford the complainant any fair or reasonable return upon the value of its property, and that to comply therewith would take the property of complainant without due process of law; because the evidence shows that said laws are reasonable and compensatory, and that they do afford the complainant a fair and reasonable return upon the value of its property; and upon the evidence in the case, the complainant's bill and its amended and supplemental bill, in so far as they sought for any relief against, or brought into question the validity of said maximum freight rate laws, should have been dismissed.

2. The court erred in its amended decree in thereby adjudging and decreeing that the defendant, Elliott W. Major, Attorney General of the State of Missouri, be enjoined from enforcing, or attempting, directly or indirectly, by suit or in any other manner whatsoever, to enforce against the complainant, its officers, agents, employés or servants, any of the provisions of or penalties provided for

in the acts of the Legislature of the State of Missouri, mentioned in said decree, and approved, respectively, April 14, 1905, April 15, 1905, and two approved March 19, 1907.

3. The court erred in its amended decree in thereby adjudging and decreeing that the defendants, John A. Knott, H. R. Oglesby and Frank A. Wightman, Railroad Commissioners of the State of Missouri, be enjoined from enforcing, or attempting, directly
301 or indirectly, by suit or in any other manner whatsoever, to enforce against the complainant, its officers, agents, employés or servants, any of the provisions of or penalties provided for in the acts of the Legislature of the State of Missouri, mentioned in said decree, and approved, respectively, April 14, 1905, April 15, 1905, and two approved March 19, 1907.

4. The court erred in decreeing that the maximum freight rate laws of 1905 and 1907 are unreasonable and confiscatory, do not afford the complainant any fair or reasonable return upon the value of its property, and that to comply therewith would take the property of complainant without due process of law; because the evidence in the case is not sufficient to overcome the presumption in favor of the validity of those laws and the evidence does not establish clearly and beyond all doubt their invalidity.

5. The court erred in decreeing that the freight rate laws of 1905 and 1907 were confiscatory and therefore deprived the complainant of its property without due process of law, because the burden of proof upon that issue was upon the complainant, and that burden was not sustained. The exact gross revenue from intrastate business for any given period was easy of ascertainment. The ascertainment of the expense of earning that revenue was difficult by reason of the fact that interstate and intrastate freight were transported in the same trains and often in the same cars. It was in the power of the complainant, at any time during the litigation, to have determined, by actual observation and investigation for a period which should be typical, the volume of freight, both intrastate and interstate, carried on each of its trains within the State of Missouri during such period, the revenue from each class of freight and also, quite closely, the expense of moving each of said trains within the State, and to have exhibited to the court the result of such observation and investigation. The court would thus have been enabled to determine approximately how much of the total expense of moving said trains should be assigned to the intrastate and interstate freight, respectively, contained in them.

No evidence of this character was adduced, no tests of this kind made. Upon this question the court was left to reach a conclusion upon the opinions of witnesses. No decree should have been rendered for complainant until this evidence of actual facts of vital importance, which was at its command, had been adduced to the court.

6. The court erred in adjudging and decreeing in its amended final decree herein that the maximum freight rate laws of Missouri, of 1905 and 1907, were unreasonable and confiscatory, and did not afford the complainant any fair or reasonable return upon the value of its property, and that to comply therewith would take the property of complainant without due process of law; and that none of the

provisions thereof should or can be rightfully enforced against the complainant, its officers, agents, or employés.

Because it appears from the evidence that a very large part of the intrastate freight transported by the complainant is not governed as to the rates to be charged therefor by the Acts of 1905 and the Acts of 1907, but that the maximum rates for the transportation thereof are fixed by the State Board of Railroad and Warehouse Commissioners, by authority of law, conferring upon them that power. It further appears from the evidence, that the complainant has not been charging for the transportation of such freight the rates so fixed by the State Board of Railroad and Warehouse Commissioners, but rates less than those so fixed. But the complainant failed to show and made no effort to show what its
302 revenue from the intrastate freight business would have been had it charged the rates allowed by the State Board of Railroad and Warehouse Commissioners for such portion of the freight carried by it, as was not governed by the Acts of 1905 and 1907; and therefore there is no evidence in the case that if the complainant had charged such rates and had also complied with the Acts of 1905 and 1907, it would not have received a revenue from its intrastate freight business which would have afforded it a fair, adequate and just return for doing such business. If it had charged what it might, according to the law of the State, have charged for the transportation of such freight, its receipts for doing its entire intrastate freight business might, for any evidence which appears in the case, have been sufficient to afford it all the net profits to which it was entitled.

7. The court erred in adjudging and decreeing in the amended final decree that the maximum freight rate laws of Missouri of 1905 and 1907 are unreasonable and confiscatory and do not afford the complainant any fair or reasonable return upon the value of its property, and that to comply therewith would take the property of complainant without due process of law, because the said acts of 1905 took effect on the 16th day of June, 1905, and the original bill herein, alleging the unconstitutionality of said Acts of 1905, and seeking to enjoin their enforcement, was filed by the complainant on said 16th day of June, 1905, and on the same day a restraining order was issued herein, enjoining the defendants, the Railroad and Warehouse Commissioners, "from taking or making out or printing or delivering any schedule of rates for complainant, containing the maximum rates fixed by said Acts." And on the 12th day of July, 1905, the court continued said restraining order as a temporary injunction, which was in force as against said defendants from said date until the final decree was entered. Therefore, at the time of the filing of said bill and the issue of said restraining order, the defendants, said Railroad and Warehouse Commissioners, because the law had not yet taken effect, had enjoyed no opportunity to revise the then existing schedule of rates.

The said defendants, Railroad and Warehouse Commissioners, had authority, under the law, to fix maximum rates for the transportation of that portion of the intrastate freight for which rates were not fixed

by the Acts of 1905, which said portion was very large in volume and produced to the complainant much the larger part of its entire revenue for the transportation of intrastate freight. The said Railroad and Warehouse Commissioners might, if they had not been prevented by the restraining order and temporary injunction herein, have fixed such rates for the transportation of said portion of such intrastate freight, and made schedules therefor, which schedules should also have embraced the maximum rates for the commodities mentioned in the said Acts of 1905, as would have permitted the complainant, while observing said schedules and said acts of 1905, to have derived from its intrastate freight business, as a whole, a gross revenue sufficient to have yielded to it a fair, just and adequate net return or profit from the doing of its said intrastate freight business. The complainant should have deferred the institution of this suit until the said Board of Railroad and Warehouse Commissioners had fixed rates and adopted schedules so low as to disable the complainant from realizing an adequate revenue upon its entire intrastate freight business.

Therefore, the action was prematurely brought; and for
303 this reason no restraining order or temporary injunction or final decree should have been rendered as to either of said maximum freight rate Acts.

8. The court erred in adjudging and decreeing by its amended final decree that the passenger rate law of 1907, approved February 27, 1907, is unreasonable and confiscatory and does not afford the complainant any fair or reasonable return upon the value of its property, and that to comply therewith would take the property of complainant without due process of law; because, upon the evidence in the case, said passenger rate law is reasonable and compensatory and does afford the complainant a fair and reasonble return upon the value of its property; and upon the evidence in the case, the complainant's bill, and its amended and supplemental bills, in so far as they sought for any relief against or brought into question the validity of said passenger rate law of 1907, should have been dismissed.

9. The court erred in decreeing that the passenger rate law of 1907 is unreasonable and confiscatory, does not afford the complainant any fair or reasonable return upon the value of its property, and that to comply therewith would take the property of complainant without due process of law; because the evidence in the case is not sufficient to overcome the presumption in favor of the validity of the law, and the evidence does not establish clearly and beyond all doubt its invalidity.

10. The court erred in its amended decree in thereby adjudging and decreeing that the defendant, Elliott W. Major, Attorney General of the State of Missouri, be enjoined from enforcing, or attempting, directly or indirectly, by suit or in any other manner whatsoever, to enforce against the complainant, its officers, agents, employés or servants, any of the provisions of or penalties provided for in said Act of the Legislature of the State of Missouri, mentioned in said decree and approved February 27, 1907.

11. The court erred in its amended decree in thereby adjudging and decreeing that the defendants, John A. Knott, H. R. Oglesby and Frank A. Wightman, Railroad Commissioners of the State of Missouri, be enjoined from enforcing, or attempting, directly or indirectly, by suit or in any other manner whatsoever, to enforce against the complainant, its officers, agents, employés or servants, any of the provisions of or penalties provided for in said act of the Legislature of the State of Missouri, mentioned in said decree and approved February 27, 1907.

12. The defendants, John A. Knott, H. R. Oglesby and Frank A. Wightman, Railroad and Warehouse Commissioners, for themselves assert that the court erred in that part of its decree whereby it enjoined them from enforcing, or attempting, directly or indirectly, to enforce against the complainant, its officers, agents, employés or servants, any of the provisions of or the penalties provided for in the passenger rate Act, approved February 27, 1907; because, under the laws of the State of Missouri, they have no functions of any kind to perform in relation to rates for the carriage of passengers, nor do such laws vest in them any authority, or devolve upon them any duties to be performed by them, directly or indirectly, to require or compel obedience to any laws relating to rates for the carriage of passengers.

13. The court erred in permitting the complainant, against the objection of the defendants to file herein its alleged amended and supplemental bill of complaint and the amendment thereto, because the original bill was based upon the Acts of the 43rd General
304 Assembly of the State of Missouri, approved April 14, 1905, and April 15, 1905, which fixed maximum rates for intrastate freight, and the alleged amended and supplemental bill and the amendment thereto is based upon the Acts of the 44th General Assembly of the State of Missouri, approved March 19, 1907, which repealed said Acts of 1905 and established a new maximum of rates for intrastate freight, and the Act of the 44th General Assembly of the State of Missouri, approved March 19, 1907, fixing rates for the transportation of fruit, and the Act of the 44th General Assembly of the State of Missouri, approved February 27, 1907, fixing a maximum schedule of rates for passenger traffic, and the matters set forth in the said alleged amended and supplemental bill of complaint and the amendment thereto, are not germane to or supplemental of the original bill of complaint herein.

14. The court erred in permitting the complainant, against the objection of defendants, to file the alleged amended and supplemental bill of complaint and the amendment thereto, so far as the same relates to the Act of the 44th General Assembly of the State of Missouri, approved February 27, 1907, fixing a maximum schedule of passenger rates, because the matters set forth in said alleged amended and supplemental bill, and the amendment thereto, relative to said Act of the 44th General Assembly of the State of Missouri, fixing a maximum schedule of passenger rates, are not germane to or supplemental of any of the matters alleged in the original bill.

15. The court erred in overruling the demurrer of the defendants

to the alleged amended and supplemental bill of complaint and the amendment thereto, because the matters contained in said alleged amended and supplemental bill of complaint and the amendment thereto, are not germane to or supplemental of the original bill, and if they constitute any cause of action whatever, constitute a new, original and independent cause of action not connected with or dependent upon the original cause of action, and one that accrued, if at all, long after the original bill was filed.

16. The court errerd in overruling the demurrer of defendants to the portions and paragraphs of the alleged amended and supplemental bill of complaint and the amendment thereto, relative to the Act of the 44th General Assembly of the State of Missouri, fixing a maximum schedule of passenger rates, because such portions and paragraphs of the alleged amended and supplemental bill of complaint and the amendment thereto are not germane to or supplemental of the original bill of complaint, and constitute, if anything, a new and independent cause of action not connected with or dependent upon the original cause of action, and one that accrued, if at all, long after the original bill was filed.

17. The court erred in granting to the complainant the relief asked, with respect to the Act of the 44th General Assembly of the State of Missouri, fixing a maximum schedule of passenger rates, because is was not authorized to take jurisdiction of that matter upon a bill of complaint filed as an amendment or supplement of a bill based upon Acts of the 43rd General Assembly of the State of Missouri, which were confined to freight rates and had been repealed.

18. The court erred in enjoining the defendant, Elliott W. Major, Attorney-General of the State of Missouri, from prosecuting the suits for injunctive relief, instituted by his predecessor in office, Herbert S. Hadley, in the State Court of Missouri, against the complainant prior to the filing of the alleged amended and supplemental bill of complaint herein.

305 19. The court erred in finding that the expense of doing the intrastate business over the interstate is greater for carrying freight by at least fifty per cent. By this language in the finding is meant at least fifty per cent more in proportion to revenue, while upon the weight of credible evidence in the case, the expense of doing the intrastate freight business over the interstate is not greater than thirty per cent per ton per mile.

20. The court erred in finding that the evidence shows that the cost of doing the intrastate freight business, as between intrastate and interstate, apportioned upon the revenue basis with added extra cost, brings a result which is fair, representative or just.

21. The court erred in finding that aside from the revenue basis, the evidence shows that the amount ascertained by the court in any of the cases, as the expense and extra cost of doing the intrastate freight business, is fair or justly represents the expense of doing the intrastate freight business.

The appellants assert, on the contrary, that aside from the revenue basis, there is no evidence in the case from which the result as found

by the court as to the expense of doing the intrastate freight business can be reached.

22. The court erred in finding that the proper method of dividing the total expense of doing complainant's freight business in the State and assigning the proper proportion thereof to the intrastate freight business, was by the application of the revenue theory, and in accordance with that theory, dividing the total expense between the two classes of business in proportion to the revenue derived from each and then to the portion thus assigned to the intrastate freight business, adding such an amount as would represent fifty per cent greater expense in proportion to revenue for the intrastate than for the interstate business. The consequence was to burden the intrastate freight business with a portion of the total expense very largely in excess of its just proportion and a much greater share thereof than was actually incurred in doing that business.

The court should have found that the proper method of ascertaining that part of the total State freight expense justly assignable to the intrastate freight, was by determining, as closely as possible, the average cost per ton mile of handling and transporting intrastate and interstate freight, respectively. The average cost per ton per mile deducted from the average revenue per ton per mile (which is easily ascertainable from the evidence) would have produced the net revenue per ton per mile derived from each class of freight. The court erred in its finding which rejected this method, by the application of which the evidence in the case shows that complainant might have complied with the freight rate Acts of 1905 and 1907, and would still have derived from the doing of its intrastate business an adequate profit fully equivalent to any net return to which it is by law entitled.

23. The court erred in finding that the sum total of the extra cost of doing the intrastate freight business would not be changed if ascertained according to the ton mile theory.

On the contrary, the evidence shows clearly that if the expense of doing the intrastate freight business be ascertained by the application of the ton mile theory, that expense would be found to be very much less than the amount found by the court; so much less as to leave to the complainant a reasonable net return for doing the business.

306 24. The court erred in finding that the revenue basis is the proper method of ascertaining the expense of the intrastate passenger traffic. In adopting that method the court divided the total expense of the passenger business done in the State between the intrastate and the interstate business by assigning to each class such a proportion of such total expense as the revenue from each class of business bore to the total revenue from the State passenger traffic, and then adding to the proportion thus ascertained for the intrastate, such an amount as would represent twenty-five per cent greater expense in proportion to revenue for the intrastate than for the interstate business. The result of the application of this method was to charge the intrastate business with a much larger share of the total expense than was actually incurred in doing that business.

The true method is to ascertain the average revenue and expense of carrying a passenger one mile, in each class of business, and the difference would be the net revenue or deficit on each passenger mile.

The evidence shows that the net revenue per passenger mile is greater in the intrastate than in the interstate business, and that the net revenue from its intrastate passenger business, if charged for at the rates fixed by the Act of February 27, 1907, affords to the complainant a reasonable and adequate return for doing the business.

25. The court erred in finding that the expense of doing the State passenger business over the interstate is at least twenty-five per cent; this language meaning twenty-five per cent more in proportion to revenue. The evidence in the case does not support this finding.

26. The court erred in adopting the tables of earnings and expenses of the complainant, set forth in the finding of facts, because the said tables of expenses and of earnings did not cover any fairly representative period of operations of the complainant, and because said tables of expenses and earnings are not supported by any competent evidence in the case.

27. The court erred in finding that the short line between two competitive points, necessarily fixes the rate. If the rate is thus fixed it is because the complainant and the other railroad companies of the State have agree with each other that it shall be so fixed.

28. The court erred in finding that it was conceded by the experts that the companies accurately and honestly kept their books, showing the facts set out in the findings of the court. The books of the companies did not show the facts set out in said findings, nor did the experts for the State concede that they did.

29. The court erred in finding (as stated in the opinion), that evidence in the case tended to show that a large number of men have been discharged from the service of the railroad companies by reason of the reduction of the rates. Not a reduction in rates, but a general depression in business and the want of business to keep the men employed, was the cause of their discharge.

30. The court erred in finding that the value of the complainant's franchise, included in the total valuation of its property as fixed by the State Board of Equalization, was so small a per cent of such total valuation as to make no appreciable difference in the result of the case.

On the contrary, the evidence shows that the value of the franchise was a substantial part of such total valuation.

31. The court erred in finding that if the value of complainant's franchise were altogether omitted from the value of its property, it could not have obtained from the operation of its property, or from the doing of the intrastate freight business, the return to
307 which it is entitled.

32. The court erred in finding that the complainant was entitled to a return upon the value of its franchise.

Wherefore, these defendants pray that the said amended final decree be reversed, and that said court may be directed to enter a decree

dismissing the complainant's bill, its amended and supplemental bill, and the amendment thereto.

ELLIOTT W. MAJOR,
Attorney General;
JOHN M. ATKINSON,
Assistant Attorney General;
SANFORD B. LADD,
Solicitors for Defendants John A. Knott, H. R. Oglesby and Frank A. Wightman, Railroad and Warehouse Commissioners, and Elliott W. Major, Attorney General of the State of Missouri.

308 Afterwards, to wit, on the 15th day of March, 1911, Defendants' Petition for Appeal was filed. Said Petition for Appeal is in words and figures as follows:—

309 In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 3000.

THE WABASH RAILROAD COMPANY, Complainant,
v.
JOHN A. KNOTT, H. R. OGLESBY and FRANK A. WIGHTMAN, Railroad and Warehouse Commissioners; Elliott W. Major, Attorney General of the State of Missouri; Joseph M. Patterson, Charles E. Moss and George J. Dodd, Judges of the County Court of Jackson County, Missouri; Arthur C. Warner, Treasurer of Jackson County, Missouri; Joseph Sanderson, J. S. Peppard, and Sidney Smith, and Julius H. Lang and Charles A. Kirtley, Defendants.

The above named defendants, John A. Knott, H. R. Oglesby and Frank A. Wightman, Railroad and Warehouse Commissioners, and Elliott W. Major, Attorney General of the State of Missouri, conceiving themselves aggrieved by the decree, rendered as of the 8th day of March, A. D. 1909, but signed, filed and entered on the 22nd day of March, A. D. 1909, as amended by the decree entered on the 17th day of April, A. D. 1909, in the above entitled cause do hereby appeal from said decree to the Supreme Court of the United States for the reasons specified in the assignment of errors which is filed herewith, and pray that this appeal may be allowed and that a transcript of the record, proceedings and papers upon which said decree was made, duly authenticated, may be sent to the Supreme Court of the United States.

And said defendants further show to the court that they have, in writing, notified the other defendants in said cause, towit: Joseph M. Patterson, Charles E. Moss and George J. Dodd, and Hugh C. Gilbert, Edward L. Martin and Edward E. Axline, as successors respectively to said Joseph M. Patterson, Charles E. Moss and George J. Dodd, in the

offices of the Judges of the County Court of said Jackson County; Arthur C. Warner and Overton H. Gentry, Jr., as successor to said Arthur C. Warner in the office of Treasurer of said Jackson County; Joseph Sanderson, J. S. Peppard, Sidney Smith, Julius H. Lang and Charles A. Kirtley of their intention to present this petition for an appeal, and have, in writing, invited said other defendants to join with them in such petition for an appeal, and that all of said other defendants have, in writing, accepted service of said notices and invitations, and have, also in writing, severally declined to join in said petition for an appeal, which said notices and invitations, acceptances and declinations are now presented to the court and filed herewith.

ELLIOTT W. MAJOR,
Attorney General;
JOHN M. ATKINSON,
Assistant Attorney General;
SANFORD B. LADD,
Counsel for John A. Knott, H. R. Oglesby and Frank A. Wightman, Railroad and Warehouse Commissioners, and Elliott W. Major, Attorney General of the State of Missouri.

Dated this 15th day of March, A. D. 1911.

The foregoing petition for appeal is allowed. Dated March 15th 1911.

(Signed) SMITH McPHERSON, *Judge.*

310 Afterwards, to-wit, on the 15 day of March, 1911, a Bond for Appeal was approved and filed. Said Bond is in words and figures as follows, to-wit:—

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 3000.

THE WABASH RAILROAD COMPANY, Complainant,
vs.
JOHN A. KNOTT, H. R. OGLESBY and FRANK A. WIGHTMAN, Railroad and Warehouse Commissioners; Elliott W. Major, Attorney General of the State of Missouri; Joseph M. Patterson, Charles E. Moss and George J. Dodd, Judges of the County Court of Jackson County, Missouri; Arthur C. Warner, Treasurer of Jackson County, Missouri; Joseph Sanderson, J. S. Peppard, and Sidney Smith, and Julius H. Lang and Charles A. Kirtley, Defendants.

Know all men by these presents: That we, John A. Knott, H. R. Oglesby, Frank A. Wightman and Elliott W. Major, as principals, and J. W. Perry and W. H. Seeger, as sureties, are held and firmly

bound unto The Wabash Railroad Company, in the sum of One Thousand Dollars ($1000) to be paid unto the said The Wabash Railroad Company, its successors or assigns, to which said payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents.

Sealed with our seals and dated this 15th day of March, A. D. 1911.

This obligation is upon this condition:

Whereas, the above named John A. Knott, H. R. Oglesby,
311 Frank A. Wightman and Elliott W. Major have prosecuted their appeal to the Supreme Court of the United States to reverse the decree rendered, and entered in the above entitled cause by the Circuit Court of the United States for the Western Division of the Western District of Missouri;

Now if the above named John A. Knott, H. R. Oglesby, Frank A. Wightman and Elliott W. Major, shall prosecute their said appeal to effect, and answer all costs if they shall fail to make good their plea, then this obligation to be void, otherwise to remain in full force and virtue.

JOHN A. KNOTT.	[SEAL.]
H. R. OGLESBY.	[SEAL.]
FRANK A. WIGHTMAN.	[SEAL.]
J. W. PERRY.	[SEAL.]
W. H. SEEGER.	[SEAL.]
ELLIOTT W. MAJOR.	[SEAL.]

The above bond is hereby approved and ordered to be filed and made a part of the record.

(Signed) SMITH McPHERSON, *Judge.*

312 Afterwards, to-wit, on the 15th day of March, 1911, the following Order Allowing Appeal to defendants was filed and entered of record:

313 In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 3000.

THE WABASH RAILROAD COMPANY, Complainant,

v.

JOHN A. KNOTT, H. R. OGLESBY and FRANK A. WIGHTMAN, Railroad and Warehouse Commissioners; Elliott W. Major, Attorney General of the State of Missouri; Joseph M. Patterson, Charles E. Moss and George J. Dodd, Judges of the County Court of Jackson County, Missouri; Arthur C. Warner, Treasurer of Jackson County, Missouri; Joseph Sanderson, J. S. Peppard, and Sidney Smith, and Julius H. Lang and Charles A. Kirtley, Defendants.

Now at this day come the defendants, John A. Knott, H. R. Oglesby and Frank A. Wightman, Railroad and Warehouse Commissioners, and Elliott W. Major, Attorney General of the State of

Missouri, and present their petition for an appeal to the Supreme Court of the United States from the final decree rendered herein, and also present an assignment of errors accompanying said petition, and at the same time make it appear to the satisfaction of the court that they have, in writing, notified the other defendants in this cause, that is to say, Joseph M. Patterson, Charles E. Moss and George J. Dodd, and Hugh C. Gilbert, Edward L. Martin and Edward E. Axline, as successors respectively to said Joseph M. Patterson, Charles E. Moss and George J. Dodd, in the offices of the Judges of the County Court of said Jackson County; Arthur C. Warner, and Overton H. Gentry, Jr., as successor to said Arthur C. Warner, in the office of Treasurer of said Jackson County; Joseph Sanderson, J. S. Peppard, Sidney Smith, Julius H. Lang and Charles A. Kirtley, of their (the said petitioners') intention to present said petition for an appeal, and have, also in writing, invited said other defendants to join with them, the said petitioners, in said petition for an appeal, and that all of said other defendants have, in writing, accepted service of said notices and invitations, and have, also in writing, severally declined to join in said petition for an appeal, which said notices, invitations, acceptances and declinations are now, by said petitioners, presented to the court; and it is thereupon ordered by the court that said petition for an appeal, said assignment of errors, said written notices, invitations, acceptances and declinations be filed and made a part of the record in this cause, and it is further ordered that the interests of the defendants so presenting said petition for an appeal be severed in said appeal from the interests of the said other defendants herein, and upon consideration of said petition, the court now allows the same, and to the said defendants, John A. Knott, H. R. Oglesby, Frank A. Wightman and Elliott W. Major, an appeal to the Supreme Court of the United States from the final decree rendered in this cause in accordance with the prayer of said petition. And at the same time the said defendants present their bond for an appeal in the sum of One Thousand Dollars ($1,000) with J. W. Perry and W. H. Seeger as sureties thereon, which said bond is now approved by the court, and it is ordered that a certified transcript of the record, testimony, exhibits, stipulations and all proceedings herein be transmitted to the said Supreme Court of the United States.

Dated Kansas City, Missouri, March 15th, 1911.

(Signed) SMITH McPHERSON, *Judge.*

314 Afterwards, to-wit, on the 15th day of March, 1911, an assignment of errors was filed. Said assignment of errors is in words and figures as follows, to-wit:—

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 3000.

WABASH RAILROAD COMPANY, Complainant,
vs.
JOHN A. KNOTT, H. R. OGLESBY and FRANK A. WIGHTMAN, Railroad Commissioners, et al., Defendants.

Assignment of Errors.

Now comes complainant and respectfully shows that the court in the proceedings and decree in the above entitled cause committed manifest error in each of the following respects:

1. In rendering and entering that portion of paragraph 5 of the original and amended decree reading:

"It is further ordered, adjudged and decreed that the defendants, or any of them, when the circumstances have changed so that the rates fixed as aforesaid shall yield to complainant reasonable compensation for the services aforesaid, may apply to this court by supplemental bill or otherwise, as defendants or either of them may be advised, for further orders in their behalf."

2. In rendering and entering paragraph 6 of the amended final decree reading:

"The taxable costs of the case including those covered by orders of the court, heretofore made or hereafter made on motion to
315 tax or retax, and including printing bill of Buxton-Skinner Stationery Company shall be paid as follows, to-wit: The one-half by complainant and the other half by defendants who are Railroad Commissioners and the Attorney General, to be recovered by execution to be issued by the clerk of this court upon application of any party in interest."

3. In not decreeing to be regulation of commerce among the states and invalid, of no force, and contrary to the provisions of section 8, article 1, of the constitution of the United States, each of the acts of the legislature of Missouri mentioned in paragraph 2 of the amended final decree; the purpose of this assignment being to make it a separate assignment of error as to each of said acts, the same as if it were separately written out and applied to each act.

4. In not decreeing that the rights, privileges and immunities of complainant were abridged, that complainant was denied the equal protection of the law and deprived of its property without due process of law, all contrary to the provisions of the fourteenth amendment to the constitution of the United States, by the state making and enforcing each of the legislative acts mentioned in paragraph 2 of the amended final decree; the purpose and intent hereof being to separately assign this error as to each one of said acts the same as if so separately written.

5. In holding that neither the freight act approved March 19,

1907, nor that approved April 14, 1905, nor that approved April 15, 1905, nor the passenger act approved February 27, 1907, nor the enforcement of either of them, directly affected interstate commerce.

6. In holding that neither the freight act approved March 19, 1907, nor that approved April 14, 1905, nor that approved April 15, 1905, nor the passenger act approved February 27, 1907, was discriminatory against complainant, or, as to it, violative of the fourteenth amendment to the constitution of the United States
316 when the act was upon its face general in its terms, applicable to all companies in the state, and the findings show that it is confiscatory as to each of the other companies in the state and as to complainant's competitors.

7. In holding that the passenger act approved February 27, 1907, was upon its face valid, whereas it was discriminatory and unreasonably classified companies according to mileage and according to ownership, control and occupation so that all roads in the state were arbitrarily required to charge two cents per mile, except those of less than forty-five miles in length, which were permitted to charge four cents per mile, provided they were not owned, leased, controlled or occupied by any trunk line, company or corporation.

8. In holding that the passenger act approved February 27, 1907, was on its face valid, when it was discriminatory and unreasonable, and classified the fares to be charged by providing half fare for children.

9. In holding to be valid upon its face the freight act approved April 15, 1905, whereas it was discriminatory and unreasonable in that it fixed rates to be charged by any individual or railway company, owning, operating, managing and leasing a railroad but applied the penalties only to railway companies or corporations.

10. In not decreeing to be void each of the acts of the legislature of Missouri mentioned in paragraph 2 of the amended final decree, for that the penalties were so enormous, unreasonable and severe as to be an attempt to coerce complainant to put them in and prevent it from having a judicial inquiry and review; all contrary to the fourteenth amendment to the constitution of the United States; the purpose being to make this a separate assignment as to each of said acts the same as if they were separately written out and applied thereto.

317 For all of which reasons the decree and holding of the Circuit Court in such regard should be reversed.

FRANK HAGERMAN,
Solicitor for Complainants.

318 And on the 15th day of March, 1911, a petition for cross appeal was filed. Said petition for cross appeal is in words and figures as follows, to-wit:—

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 3000.

WABASH RAILROAD COMPANY, Complainant,
vs.
JOHN A. KNOTT, H. R. OGLESBY, and FRANK A. WIGHTMAN, Railroad Commissioners, et al., Defendants.

The above named complainant, conceiving itself aggrieved by the decree rendered and entered on March 22, 1909, as of March 8, 1909, as amended by the decree rendered and entered on April 17, 1909, at the November, 1908, term of court in the above entitled cause, does hereby apply for an appeal, and does appeal from such decree to the Supreme Court of the United States for the reasons specified in the assignment of errors filed herewith, and prays that this appeal may be allowed as a cross-appeal, and such steps taken to perfect the same as may be required by law, an appeal having already been prosecuted for the decree, and a transcript taken by the attorney general and railroad and warehouse commissioners, defendants in the cause.

FRANK HAGERMAN,
Solicitor for Complainant.

The foregoing petition for appeal is presented and allowed this March 15, 1911, by the undersigned, Judge who rendered the decree appealed from.

(Signed) SMITH McPHERSON, *Judge.*

319 Afterwards, to-wit, on the 15th day of March, 1911, a bond for cross appeal was approved and filed. Said bond is in words and figures as follows, to-wit:—

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 3000.

WABASH RAILROAD COMPANY, Complainant,
vs.
JOHN A. KNOTT, H. R. OGLESBY, and FRANK A. WIGHTMAN, Railroad Commissioners, et al., Defendants.

Bond.

Know all men by these presents that the Wabash Railroad Company, as principal, and E. E. Ball, as surety, are held and firmly bound unto the above named defendants in the full and just sum of two hundred and fifty dollars to be paid

to said defendants, their heirs, executors, administrators or assigns, for which payment well and truly to be made, we bind ourselves, our successors, heirs, executors and administrators, jointly and severally by these presents.

Dated this March 15, 1911.

Whereas lately, at the November, 1908, term of the above named court, in the above entitled cause, a decree was rendered against said complainant, which has obtained a cross appeal to reverse the action of the court in the aforesaid suit and a citation directed to the said defendants citing and admonishing them to be and appear

320 in the supreme court of the United States at the city of Washington, District of Columbia, thirty days from and after the date of the said citation,

Now the condition of the above obligation is such that if the said cross appellant and complainant above named shall prosecute said cross appeal to effect, and answer all damages and costs if it fail to make good its appeal, then the above obligation to be void; otherwise to remain in full force and virtue.

WABASH RAILROAD CO.,
Principal,

By FRANK HAGERMAN,
Agent and Attorney.

E. E. BALL, *Surety.*

The above bond is hereby approved and ordered to be filed and made a part of the record this March 15th, 1911.

(Signed) SMITH McPHERSON, *Judge.*

321 And on the 15th day of March, 1911, the following order allowing cross appeal was filed and entered of record, to-wit:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 3000.

WABASH RAILROAD COMPANY, Complainant,
vs.
JOHN A. KNOTT, H. R. OGLESBY, and FRANK A. WIGHTMAN, Railroad Commissioners, et al., Defendants.

Order.

This cause coming on for hearing this March 15th, 1911, upon the application for an appeal by the complainant, together with its assignment of errors, an appeal is hereby allowed and bond for appeal is hereby fixed in the sum of two hundred and fifty dollars.

Inasmuch as this is a cross appeal, the clerk is directed to forward a transcript of all proceedings in the cause since the prepara-

tion and filing of a transcript of the record in the appeal taken by the defendants.

(Signed) SMITH McPHERSON, *Judge.*

322 Afterwards, to wit, on the 31st day of March, 1911, the following order was filed and entered of record:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

#3000.

WABASH RAILROAD COMPANY, Complainant,
vs.
JOHN A. KNOTT et al., Defendants.

For good cause shown, that is, because the Clerk of said Circuit Court is unable to prepare a transcript of the record herein within thirty days from the date of the day of signing the citation herein it is

Ordered that the time for filing said record with the Clerk of the Supreme Court be, and the same is hereby, enlarged; and it is

Ordered that said record may be filed with the clerk of the Supreme Court on or before the first day of August, 1911.

(Signed) SMITH McPHERSON, *Judge.*

Dated Kansas City, Mo., March 31, 1911.

323 Afterwards, to-wit, on the 13th day of April, 1911, a Stipulation was filed. Said Stipulation is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 3000.

WABASH RAILROAD COMPANY, Complainant,
v.
JOHN A. KNOTT et al., Defendants.

Whereas, John A. Knott, H. R. Oglesby and Frank A. Wightman, Railroad and Warehouse Commissioners, and Elliott W. Major, Attorney General of the State of Missouri, defendants in the above entitled cause, have been allowed an appeal therein to the Supreme Court of the United States.

And, Whereas, the said The Wabash Railroad Company, complainant, has been allowed a cross-appeal herein to the Supreme Court of the United States.

And, Whereas, the said Railroad and Warehouse Commissioners

and said Attorney General were, by said circuit court, allowed an appeal, and the Chicago, Burlington and Quincy Railroad Company was allowed a cross-appeal to the Supreme Court of the United States from a decree rendered by said circuit court in a cause then pending in said Circuit Court of the United States, wherein said Chicago, Burlington and Quincy Railroad Company was complainant, and said Railroad and Warehouse Commissioners and said Attorney General and others were defendants.

And, Whereas, the evidence offered, taken and received in the said circuit court in the above entitled cause is included in the transcript and printed record in said cause wherein the said Chicago, Burlington and Quincy Railroad Company was complainant.

And, Whereas, all of said evidence was for the purpose of the hearing in said Supreme Court of the United States of the
324 said appeal and cross-appeal in said cause wherein the said Chicago, Burlington and Quincy Railroad Company was complainant, printed, under the direction of the clerk of the Supreme Court of the United States and is contained in five printed volumes now on file in the office of the clerk of said Supreme Court in the causes therein pending, numbered 21821, wherein John A. Knott and others are appellants and the Chicago, Burlington and Quincy Railroad Company is appellee, and numbered 21837, wherein the Chicago, Burlington and Quincy Railroad Company is appellant and John A. Knott and others are appellees.

Now, therefore, in order to save the parties hereto the useless expense which would be incurred in the preparation of a complete transcript of the record and the evidence in the above entitled cause, it is stipulated and agreed between the parties hereto that upon the hearing in the said Supreme Court of the appeal and the cross-appeal in the above entitled cause, the evidence contained in said five printed volumes shall be taken and regarded as the evidence in the above entitled cause with the same effect as if it had been written out and certified in this cause by the clerk of the circuit court, and that the evidence contained in said five printed volumes, supplemented by a transcript of all the pleadings, papers, decrees and orders peculiar to the above entitled cause, shall be taken and regarded in said Supreme Court as a complete transcript of the record and proceedings in the above entitled cause, and that it shall not be necessary for the clerk of the circuit court to include in the transcript prepared by said clerk any evidence contained in said five printed volumes.

ELLIOTT W. MAJOR,
Attorney General, Solicitors for John A. Knott et al., Appellants.
FRANK HAGERMAN,
Solicitors for Wabash R. R. Co., Appellee.
FRANK HAGERMAN,
Solicitors for Wabash R. R., Cross-Appellant.
ELLIOTT W. MAJOR,
Attorney General, Solicitors for John A. Knott et al., Cross-Appellees.

325 The Opinion filed herein on the 14th day of June, 1907, is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 3000.

THE WABASH RAILWAY COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendants.

And Seventeen Other Like Cases.

Remarks of Judge Smith McPherson, at Two o'clock p. m., June 14th, 1907.

Here are 18 cases, in which all the railways of the State ask to file supplemental bills in equity in the 18 cases, brought two years ago against the State officers to enjoin the enforcement of statutes of 1905 fixing rates. The charge was made that the rates were not remunerative but confiscatory, and therefore void by reason of the United States Constitution. Those cases were placed at issue and referred to a master. The evidence has been taken and the court is now advised that within a month or two the cases will be argued to the Master. So that after six months or more from now a final decree will be entered in this court. I do not speak of this delay in a spirit of complaint, or even criticism. I simply state the fact of delay. During the early part of this year the legislature of Missouri repealed part of the rate laws of 1905 complained of, enacted substitutes therefor and placed still other commodities under specific tariff rates, including passenger rates of two cents per mile.

Early in this week notices were given of an application to file supplementary bills, attacking the rates fixed in 1907, on the ground that such rates were confiscatory.

That this is a judicial question all informed people agree. That it is a question of gravity and almost supreme importance all recognize and by none more than by the courts. It involves the question of what are reasonable rates and how determined. It involves the question of whether all the receipts for State business can be taken in their entirety, and if in the aggregate remunerative of whether the laws are valid. And it involves the question as

326 to whether every person is entitled to have his product carried at reasonable rates instead — carrying some at unreasonably low rates and others at unreasonably high rates, and allowing the law to stand because the average is remunerative. And it involves the question of whether the State of Missouri is attempting to exercise the powers solely lodged in the Congress of the United

States. And there may or may not be involved the question of which is the more powerful with reference to these rates, the nation or the state.

I express no opinion as to some of these questions, on some of which I have a conviction and on others I do not even have a tentative opinion. But they are all judicial questions, and for the courts only, and in the end will be decided by the Supreme Court of the United States, a court in which every patriotic person has unbounded confidence. To that Court these questions in the end will go for decision.

As to whether these supplemental bills may be filed was set down for argument this morning at the opening of court. These rate statutes presumptively are valid, and if valid went into effect at midnight last night. Seeing the gravity of the situation, this court on yesterday, on its own motion, on inspecting the proposed supplemental bills, entered a restraining order, restraining the railways from carrying out the recent statute until the matters could be heard, as to filing the supplemental bills on which, if filed, a temporary injunction should issue. At the morning hour of this day, the Assistant Attorney General of the State appeared and stated that the Attorney General could not be here until to-morrow morning. It was also at that time made to appear that on the morning of this day suits were filed in the state courts at St. Louis and Kansas City, and a temporary mandatory injunction had been issued by the state courts, commanding the railways to recognize as valid and carry out the statute of 1907.

All courts, state and federal, recognize the delicacy of real or seeming conflicts between the courts. All courts recognize that all other courts act in good faith. And this court appreciates
327 the situation. It is a question worthy of argument and deliberation.

When the foregoing situation was disclosed this morning counsel for the railways moved for a continuance for a week or ten days, to the end that the situation might be looked into. This motion will be overruled, and all these matters are set down for hearing at two o'clock to-morrow afternoon. These delays cannot be allowed. The interests of the public and the railways alike demand the speedy determination of all questions connected with the foregoing statements as well as all questions connected with the validity or invalidity of the rate statute recently enacted by the state legislature of Missouri. At the time named I shall expect counsel on both sides to be ready to proceed in argument, as well as to move for such other proceedings as may be deemed proper. All of which is so ordered.

328 On the 17th day of June, 1907, an Opinion was filed. Said Opinion is in words and figures as follows:—

In the Circuit Court of the United States, Western District of Missouri, at Kansas City.

THE WABASH RAILWAY COMPANY
vs.
HERBERT S. HADLEY, Attorney General, and THE STATE RAILROAD COMMISSIONERS.

And Seventeen Other Like Cases.

Remarks of Judge Smith McPherson, Monday, June 17, 1907.

These cases were argued on Saturday and taken under advisement until this time. The situation is such that I must decide the questions today. Limited as the time has been, I have an abiding conviction of what should be done even if the reasons therefor may not be stated with the fullness that the importance of the matters requires. I have been much aided by the arguments, which were strong, eloquent and powerful, by counsel representing both sides, and as it seems to me, every phase of the questions was so illuminated by the arguments that all possible questions are at an end of debate.

The real question here is, has this court jurisdiction ever the passenger fare law of 1907 of the Missouri Legislature by which it is declared that the legal fare be two cents per mile. A question connected with that is, whether the bills tendered are supplemental bills to those filed in the eighteen cases two years ago to enjoin the enforcement of the freight tariff law of 1905 now pending before the Master.

A supplemental bill usually is where there has been some change in the rights or status of the parties which must be carried forward by a supplemental bill. And usually when a supplemental bill is thus allowed, matters can be brought in which could have been covered by an amendment to the original bill. These discussions as to supplemental bills, as well as to other bills, are exceedingly technical. It seems to me that the test is not so much in the way
329 a plea is styled, as what the allegations of the pleading are. Formerly, discussions as to various bills in equity gave rise to great delay, the results being that years and years would elapse before a chancery case could be concluded. Looking back at those old discussions, it now seems to have been a folly to thus waste the time and energies of the judges and of counsel in determining these technical questions. Such must have been the belief of the Supreme Court when a code of Rules in Equity were established, the purpose no doubt being to get rid of the old technicalities which served no useful purpose. By the adoption of the Rules in Equity, we have a system of fact pleading, covering almost every phase of equity pleading and practice; and it is only when some question of practice is not covered by the rules, that we go back to see what the practice of the High Court of Chancery in England was, and then not

as positive rules, but as furnishing just analogies. Rule 90 thus providing was adopted in the year 1842, and the Supreme Court has decided that when we go to the English Chancery practice, we must take the practice as it existed in England in 1842, when this rule was adopted. By Rule 57 it will be seen that the supplemental bill is allowed when any material event has happened after the filing of the original bill. In 1905 the Legislature of Missouri enacted a maximum freight tariff statute as to several commodities. The railways contested the validity of that statute in the eighteen actions above referred to, and these actions are still pending. By the act of 1907 the Legislature declared that all railways should charge but two cents per mile per passenger. It seems to me that this is an event happening since the institution of the original suits, and an event that is germane to the original controverted questions.

But I do not deem it of much importance to determine whether the pleadings tendered for filing are supplemental bills, or whether they are original bills.

On Tuesday, the 11th inst., the complainants gave notice of filing these bills on Friday, the 14th inst. On Thursday, the 13th
330 inst., the railway companies asked leave to file them. Solely out of courtesy to the Attorney General, who was not then present, this was refused, but the Court on its own motion issued restraining orders to keep the matters in status quo. At the time fixed, Friday the 14th inst., the matter was again delayed for a day at the request of the Attorney General, he still being absent. And on that day bills were filed in the state courts at Saint Louis and Kansas City, the purpose being, as it is said, to bring about the enforcement of this statute in question. And the argument now is, that as these cases were filed in the state courts on Friday the 14th inst., the day before the arguments were had in this court, that the same subject matter was pending in the state courts, and that the state courts would take jurisdiction to the exclusion of this court, the cases being there first pending. But the above statement of facts shows that the cases were pending in this court from Tuesday the 11th inst. and that orders were made on Thursday the 13th inst., the day before the cases were lodged in the state courts. If these matters could not be covered by supplemental, they could be covered by original bills, and they were presented prior to the institution of the cases in the state courts. It is not material whether these supplemental bills so-called are full and complete as original bills. Defects could be cured upon exceptions or demurrers, or by complainants on their own motion before the filing of an answer. Nor is it material whether these pleadings are filed in the original cases or separately docketed; because if separately docketed, they will at once for trial purposes be consolidated with the old cases pursuant to Section 921 of the Revised Statutes. And whether the contention of counsel for the state officers be technically correct or not, the contention is without substantial merit as to the rights of the parties. These pleadings should be filed and regarded as having been filed on Tuesday, the 11th inst.

The fixing of rates by the Legislature is presumptively correct

and the Railway Companies have the burden of proof of showing that the statute is not remunerative. That the fixing of rates is a legislative act, all agree. But that such rates must be reasonably remunerative, cannot longer be discussed. The railways are entitled to cost and a reasonable profit, and no fair-minded man dis-
331 putes it. How to arrive at the cost and a reasonable profit, is a most difficult problem. But if the statute is challenged, it must be ascertained, and this ascertainment can only be by judicial proceedings, and must be determined by the courts, and ultimately by the Supreme Court of the United States. No skill of the draughtsman by the use of words or phrasing can take this question from the courts. It can never be settled in a criminal case by arresting ticket agents and conductors. The Supreme Court in the end must have the evidence with the right to make the ultimate findings of fact. There is but one orderly and seemly way, and that is in equity with the right of appeal to the Supreme Court, as has been said by that court over and over again. All contentions that the courts of the state can decide these questions as well as can the United States Courts, is not a question for argument because it is a question of jurisdiction, and in my judgment, in these cases this court has jurisdiction, and having jurisdiction, the jurisdiction should be exercised.

There seems to be much feeling in the minds of many as to where these cases should be adjudicated, but why the feeling I do not understand. And yet I recall the historical facts that at various times since the organization of this government, the feeling has run high as to whether the federal or state courts should adjudicate matters of importance to the public. No one doubts that the states have a right to manage their own local affairs, and to have matters growing out of their own local affairs determined by their own courts. But it is too late to seriously complain because the United States Courts take and exercise jurisdiction under the constitutional provision providing for the courts, and the enactments thereunder. The United States Courts, regardless of the citizenship of the parties, will take and exercise jurisdiction in actions of a civil nature when the provisions of the United States Constitution are invoked, as has been done in this case. The Constitution provides for this, and Congress has provided the procedure. The Commerce Clause of the United States Constitution has been invoked, as is the Fourteenth Amendment. These are national questions, and the Supreme Court will hold the scales of justice with the evidence before it, and why there should be any excitement or feeling about this, is beyond my com-
prehension. I do not know, and of course do not state, that
332 the State Legislature has wronged these railways, because that is the question to be decided when deciding the merits of the case. The railways say that they are being wronged, and they should have a hearing, and the hearing should be on the evidence, and that evidence carried in the record to the Supreme Court. And if upon the evidence the railways are being compelled to transact business at a loss, no one ought to doubt but that the Supreme Court will hold the statute void. If the rates fixed are remunerative, no

one ought to doubt but that the statute will be upheld. It is too late to talk about the alleged wrongs of the Supreme Court declaring statutes void. That question was fought out one hundred years ago, and from the organization of the Supreme Court down to the year 1888, being the period covering the first one hundred years of the United States Supreme Court, that court held twenty United States Statutes void. During the same period that court held one hundred and eighty-one state statutes void, of which fourteen were Missouri statutes. (See Appendix to Volume 131 U. S. Reports.) How many statutes have since been declared void by that court, I have not taken time to ascertain. Some of the statutes thus declared void were railway rate statutes enacted by the states.

These questions are of the greatest importance. There are many complications arising. Much is to be considered besides the mere rates or fares. There must be equality of rates, the treatment and charging of all alike. No rebates; no discriminations must be allowed. Safety of the public, including passengers and employés, must be considered. And as of much importance as any other question, if not the greatest of all, is the question of efficient service. Rapid and prompt delivery of freight must be had. Fast passenger trains with but few stops, for passengers going a considerable distance, are demanded. Local trains for local passengers, are required. To have such efficient service, reasonable compensation must be paid. All these questions are involved in the fixing of rates. Between the cities of Saint Louis and Saint Joseph, one line of railway is wholly within the state, while another and competing line a part of
333 the distance is within the State of Kansas. A like situation exists between Kansas City and Saint Joseph, and another like situation exists between Kansas City and Joplin. Possibly there are other like situations. In the case of Hanley vs. R. R., 187 U. S., the Supreme Court decided that a railway connecting two points within the state, and doing business between the two points, but with a line outside of the state a part of the distance, was engaged in interstate commerce controllable only by enactments of Congress. What about the Missouri statute fixing rates over the one line wholly within the state as against a competing line a part of the distance outside of the state? I do not intimate the conclusion, but that there is a question, can not be doubted. And if the statute is void in part, is it separable, leaving the valid parts to stand with the void parts eliminated? I simply mention these questions to show the gravity and importance of these cases without in the slightest degree intimating the conclusion, often discussed by men of great ability, but upon which as yet there has been no conclusion reached, so far as I know, by any of the courts.

It is urged with much plausibility that by reason of the case of Fitts vs. McGhee, 172 U. S., that because penalties are affixed to the Statute of 1907, that the criminal courts of the state only can take jurisdiction. I do not stop to review the various Missouri Statutes upon the subject of both passengers and freight, all of which must be considered as in pari materia; but it is sufficient to say that the inflicting of penalties is not the only remedy. The Attorney General

and Railroad Commissioners still have much to do with the enforcement of these statutes which the railways contend are void in part. These matters were considered, and a conclusion reached adversely to the contention of the officers of Missouri, by the Supreme Court of the United States, sustaining Judge Philips when presiding in this court, and reversing the Supreme Court of Missouri, R. R. vs. Missouri R. R. Commissioners, 183 U. S. 53. As I understand in the original eighteen cases now pending in this court, the question was and is, whether all the earnings in the aggregate are remunerative. That theory being, I suppose, by reason of the case of Smythe vs. Ames, decided by the Supreme Court, and the question is still present under the General Statutes of Missouri, the Statutes of 1905, and the Statute of 1907 in question. The time is not far distant
334 when the question will be raised, and possibly in these very cases, as to whether the statutes can stand, if some rates are too high, if the rates within the state in the aggregate are remunerative. The question will arise whether one person can have less than reasonable rates, and another be compelled to pay more than reasonable rates. Will it be a sufficient answer to say that in the aggregate the rates are remunerative? Or is that a question only between the individual and the railway company? Upon this question I intimate no ruling, but the importance of the question can not be overestimated.

These cases will be set down for hearing. The orders heretofore made will stand except as now modified. The two cent passenger fare statute should be put in force, and kept in force for some months with the rights of the railways later on to renew their motions to enjoin the enforcement of the statute. One class of people claim that with the two cent fare travel will so increase as to make it remunerative. Others deny this. The Wisconsin Commission but lately declared, after months of investigation, that in that state a two cent passenger fare would be confiscatory. Governor Hughes, by a recent veto message, so declared as against an enactment providing for the two cent fare in the populous state of New York. It may be that what will be reasonable rates in parts of Missouri on one line, will be unreasonable in another part of Missouri on another line. How can these questions be determined? Is it not at present all speculation and guesswork? Of what value will be the testimony of an ordinary business man testifying by way of opinion? And of what value will be the testimony of railway experts giving opinion and illustrating his opinions by the use of many figures? Experience over a reasonable period of time ought to, and no doubt will, settle these questions, at least for the time being, although what may be a reasonable remuneration one year, may be unremunerative five years hence. The Supreme Court of the United States in Smythe vs. Ames, referred to, took care of that question by keeping it open with the right to open up the case from time to time as circumstances required.

Therefore the orders will be that this court retains jurisdiction of these cases regardless of whether the pleadings tendered are consid-

ered as supplemental bills or original bills, and no order will
335 be made for some months with reference to the two cent fare statute, leaving it for the time being operative and as though in full force.

336 On the 17th day of June, 1907, an Opinion was filed. Said opinion is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

THE WABASH RAILWAY COMPANY
vs.
HERBERT S. HADLEY, Attorney General, and Other State Officers, and Seventeen Other Like Cases.

Remarks of Judge Smith McPherson, June 17th, 1907.

The real question here is, has this court jurisdiction over the passenger fare law of 1907 of the Missouri legislature declaring it unlawful to charge more than two cents per mile? A lesser question is whether the bills tendered for filing are supplemental bills to those filed in this court in the eighteen cases two years ago and now pending before Mr. Schofield, the Master.

I fully appreciate the responsibility resting upon me and the consequences to follow from the orders now to be made. If mistaken the mistakes are mine, even though I have had but part of one day since the argument to reach these conclusions. Never has a case before me been argued with greater eloquence, logic and power than was done by counsel both for the state officers and for the eighteen railways. Every phase of the case direct and collateral has been so illuminated that all possible questions are at the end of debate. What is the supplemental bill in equity? And wherein is the importance of defining it? Usually it is where there has been some change in the rights of the parties, which must be carried forward by a supplemental bill. One hundred and more years ago judges who had but little to do except play the rôle of mental acrobats and seek to refine and distinguish and to display an affected learning, and to discuss most gravely "the difference betwixt the west and northwest
side of a hair" most elaborately set forth their views, as to
337 original bills and amended bills and supplemental bills, and bills of review, and bills in the nature of bills of review. The result was that a chancery case lasted for many years. More than fifty years ago the Supreme Court recognized the folly of much of this, and by a code of rules adopted the system of fact pleading and left the old chancery practice in force only when the 94 rules adopted did not meet the situation that might arise, and by rule 57 defined a supplemental bill. But that is not important in my judgment. Whether this proceeding should be by original bill, or by supplemental bill is of small consequence. If by original bill, the railways

had the right to file the same without notice, and the right to a restraining order without notice. If by supplemental bill the usual practice is to require notice. And in either case it is discretionary with the judge to allow a restraining order without notice until a hearing can be had on notice as to a temporary injunction. On Tuesday the 11th instant, the complainants gave notice of filing these bills on Friday the 14th instant. On Thursday they asked to file them. Solely out of courtesy to the Attorney General, who was not present, this was refused; but the court on its own motion issued the restraining order, to keep the matter in statu quo. At the time fixed for the hearing the matter was again delayed for a day at the request of the Attorney General, he unavoidably being absent. During that delay the bills were filed in the State Courts. For this there is no criticism. But I have stated the facts, and the statement of facts shows that these cases, as to the laws of 1907, were pending and had been pending since Tuesday the 11th instant. And these bills must be considered as filed as of that date. And whether defective as original bills is not material, because such defects can be corrected on demurrer or exceptions, or by the complainant before answer as of course. Nor is it material whether filed in the original cases or separately docketed. If separately docketed, they will at once for trial purposes be consolidated with the old cases, pursuant to Section 921 of the Revised Statutes. If the contention of counsel for the state officers be technically correct, it is without substantial
338 merit as to the rights of the parties.

That the fixing of rates by the legislature is presumptively correct, all concede. That it is a legislative act, all agree. But that such rates must be reasonably remunerative, cannot longer be disputed. The railways are entitled to cost and a reasonable profit, and no fair minded man disputes it. How to arrive at the cost and reasonable profit is a most difficult problem. But it must be ascertained and this ascertainment can only be by judicial proceedings, and to be determined only by the courts and ultimately by the Supreme Court of the United States. No skill of the draftsman by the use of words or phrasing can take that from the courts to the town meeting. It cannot be changed by declamation, either sophomoric or by invective. It can never be settled in a criminal case by arresting ticket agents or conductors. The Supreme Court in the end must have the evidence, with the right to make the ultimate findings of fact. No local tribunal, Federal or State, can foreclose the fact as would be done if the case goes to the Supreme Court on writ of error to the State courts, and from the State courts there is no method of review but by writ of error. There is but one orderly and seemly way, and that is in equity, with the right of appeal to the Supreme Court as has been said by that court over and over again. The argument that the courts of the State can decide as to the validity of the laws of the State as well as can the United States courts will not be argued by any Federal judge, but will be conceded. Those courts are as high minded and as learned as are the Federal courts, but that is not the question. It is a question of jurisdiction. And this court has jurisdiction and will maintain its jurisdiction. Nor is this to the

prejudice of anyone. As I listended on Saturday to the argument, I was carried back to the days of 1801-9. I recalled the judicial revolutions of Virginia and Pennsylvania. I recalled the case of Luther v. Borden, growing out of the Dorr rebellion. I recalled the bitterness of half a century ago between Iowa and Missouri over the
339 State line. I recalled the recent lives of Thomas H. Benton and Gouvernor Morris by a distinguished author who states that at one time or another every one of the original thirteen states has tried in some form or other to destroy this government. And I recalled that in every instance, save the troubles of 1861-5, that the United States Courts have, in a dignified way, settled the disputes and law-abiding people acquiesced and the lawless element were compelled to submit.

That the States have the right to manage their own local affairs will ever be maintained. But it is too late to talk about states dictating to the Government, or to riding down its courts. This is a Nation. Its commerce will not be interfered with by any State, because for that almost alone we adopted our Constitution. The Commerce Clause will always be upheld, and the rights of the citizen, including corporations, will ever be protected in their just rights under the Fourteenth Amendment. These are National questions, and the Supreme Court will hold the scales of justice with the evidence before them. I do not know and of course do not state that the State legislature has wronged these railways. That is the case on its merits. But the railways say they are being wronged, and they must have a hearing, and a hearing on the evidence, and that evidence carried with the record to the Supreme Court. And if upon the evidence they are being compelled to transact business at a loss, no one need doubt but that the Supreme Court will nullify the Statute. If the rates fixed are remunerative, the statutes will be upheld. It is too late to talk about the alleged wrongs of the Supreme Court declaring statutes void. That was fought out one hundred years ago. Down to 1888 the period covering the first 100 years of the United States Supreme Court, that court held twenty United States statutes void. During the same period that court declared as void 181 state statutes, of which 14 were Missouri statutes. (See Appendix to Vol. 131 U. S. Rep.) How many have since been declared void I have not taken the time to ascertain. And some of the statutes thus declared void were railway rate statutes, enacted by the states.
340 It must be remembered that in passenger and freight carrying there is much to be considered besides rates or fares. Important as any, if not the most important, is the equality of rates; the treatment and charging of all alike. No rebates; no discriminations, must be allowed. Safety of the public, including passengers, and employés, must be considered. And of as much importance as any other question is efficient service. Rapid and prompt delivery of freight must be had. Fast passenger trains, with but few stops, for passengers going a considerable distance, *is* demanded. Local trains for local business *is* required. To have these reasonable compensation must be paid. So that these questions are all involved. And in consequence such business as is between St. Louis and St. Joseph,

Kansas City and St. Joseph, Kansas City and Joplin and perhaps other points, where parts of the routes of some of the lines are out of the State, a grave question is presented, and no small question is covered whether parts of these statutes are void that the matter can be separated and the balance of the statute remain in force, because Congress, even as to those lines wholly within the state, may or may not have control of such commerce when it directly interferes with commerce passing out of and back into the state. I neither pass upon this question nor express an opinion thereon, because while such questions have frequently been discussed by the ablest of men, such questions have not yet been decided. I simply mention it as a great National question.

It is urged with much plausibility that because penalties are affixed to the statutes of 1907 that the criminal courts of the state only take jurisdiction. I do not stop to review the various Missouri statutes upon the subject of both passengers and freight, all of which must be construed as in pari materia. But it is sufficient to say that the inflicting of penalties is not the only remedy. The Attorney General and Railroad Commissioners still have much to do with the enforcement of these statutes, which the railways contend are void in part. In the original cases the question was whether all the earnings in the aggregate were remunerative.

341 That question is still present under the statutes of 1907. Whether these laws by raising the freight rates and lowering the passenger fares are remunerative in the aggregate must be considered by the court. The State is not in effect a party, because the charge is that these officers are seeking to enforce void statutes, in more ways than by inflicting penalties.

The orders heretofore made will stand until vacated or modified. The cases will be set down for hearing as to whether a temporary injunction shall issue? and if issued what shall be the scope? Shall they restrain the enforcement of the recent freight rate statute? Shall they restrain the enforcement of the recent two cent passenger rate statute? Tentatively, subject to argument, and subject to change of opinion, if I should hear the cases, my present view is that the two cent passenger fare statute should be put in force and kept in force for some months at least, with the right of the railways later on to renew their motions to enjoin the enforcement of the statute. One class of people claim that with a two cent fare travel will so increase as to make it remunerative. Others deny this. The Wisconsin Commission but lately declared after months of investigation that in that State a two cent fare would be confiscatory; and Gov. Hughes by a recent veto message so declared in the populous state of New York. How is this question to be determined? Is it not all speculation and guess work? Of what value will be the testimony of an ordinary business man? And of what value will be the testimony of railway experts?

Such are my present views, hurriedly stated and without time to place them in the shape of a formal opinion. Nor would it be of substantial benefit to anyone to review the many authorities. They

are known to the profession and to the courts. But I have stated what the law is as I understand it to be.

342 On the 31st day of March, 1908, an Opinion was filed. Said Opinion is in words and figures as follows:—

In the Circuit Court of the United States in the Western District of Missouri.

No. 2988.

THE SAINT LOUIS & SAN FRANCISCO RAILROAD COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General, and Others, Defendants.

And Seventeen Other Like Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3004, 3005, 3006.

Frank Hagerman and others for Complainants.
Herbert S. Hadley, Attorney General.
John Kennish, Assistant Attorney General.
F. W. Lehmann and S. B. Ladd, for Defendants.

Opinion.

SMITH MCPHERSON, *Judge:*

Here are eighteen cases, brought by as many railway companies of the state, against the Attorney General, Railroad Commissioners of the State, County Judges, county Treasurer- and shippers.

The purpose of the bill in each case, is to enjoin the enforcement of state railway rate statutes on the ground that the rates thus fixed by legislative enactment, are not remunerative, but are confiscatory. The original bill of complaint in each case was filed in 1905 assailing an Act approved April 15, 1905 fixing rates. In June of that year temporary injunctions were issued. In December of that year answers were filed, and on defendant's motion the cases were referred to a Special Master before whom the cases are still pending.

That statute was enacted in lieu of certain sections of the Revised Statutes of the State.

In 1907 the Legislature enacted a statute which was approved March 19, 1907. This statute after referring to the one of
343 1905, declared that the same "be and hereby are repealed, and the following to be known as sections 1194, 1194*a*-1, 1194*b*-1, and 1194*c*-1 of said Revised Statutes, are enacted in lieu thereof."

Then follow four sections designated as above.

By still another statute passenger fares were fixed at two cents per mile, theretofore three cents per mile.

In June 1907 each company filed another bill, concerning which see the opinion by this Court in this case in 155 Federal Reporter 220. Since that time the cases have been pending before the Master, the delay occasioned in part at least by an awaiting of a decision of the Supreme Court in what are known as the Minnesota and North Carolina cases. This Court declined to grant a temporary injunction as to the passenger rates, but granted such writ as to the freight rates. Both statutes of 1907 provide for penalties for a violation of the enactment, and expressly recite that any liability or penalty incurred under the statute of 1905 may still be enforced It is now claimed that the original cases are at an end because the statute of 1905 has been repealed. The Court cannot so hold. As has been noticed for the statute when repealed, there was a substitute enacted. One rate was cut out and another fixed, with the penalties under the prior statute remaining. This does not overthrow the original cases. They are rightfully pending with part of the subject matter still in existence, and a new alleged grievance in place of the old. This new grievance, if one, should be brought forward by a supplemental bill that being the office of such a bill.

Two shippers on each road are made defendants. That it is proper to make them parties cannot be in doubt, as they have a direct interest. Whether a decree herein will be binding on other shippers, is a question not now for decision. And that the County Judges and Prosecutors have to do with these laws is plain. But these matters are exceedingly technical. The real question as to parties, is as to making the Railroad Commissioners and Attorney General parties defendant. As to the right to make the Attorney General and the Commissioners parties defendant, is a question that has been argued for and against with much earnestness and by the citation of many authorities.

344 At common law the office of Attorney General was the highest law office of the Crown. He represented the Crown in all legal matters and was the responsible officer as to the legal duties and prerogatives, appearing in the courts of record and the House of Lords in all matters affecting the public, to the end that justice might be done in the name of the King. The duties of that office are not less in this country, and the specific mention of many things that he must do in behalf of the public and the State are not to be regarded as exclusive in the full performance of his duties.

The Constitution and Statutes of Missouri make special mention of many things that he is required to do. He is upon a salary, and cannot receive fees. He is a member of the State Board of Equalization and of Education, as well as other Boards. He prosecutes suits on official bonds. He prosecutes railroads for refusing to grant proper rates to shippers. He must appear before the Interstate Commerce Commission when residents of the state are being wronged. He asks for, and receives, the aid of additional counsel. He sees to the enforcement of the banking laws, and proceeds against express companies and railroad companies and looks after forfeitures. These and a great many other things he is specifically required to do And the importance and dignity of his office are such, that in most in-

stances he is relieved from making oath to papers that he is permitted or required to file. And then out of apprehension that because certain things are specifically mentioned, that the conclusion would be arrived at by construction that all other matters were excluded, Section 4943 of the Revised Statutes was adopted, requiring that officer to institute and prosecute all suits and other proceedings at law and in equity requisite or necessary to protect the rights and interests of the state and to enforce any and all rights, interests or claims of the state against any and all persons and corporations.

345 It would seem that from the foregoing there could be no doubt but that it is the duty of the Attorney General to enforce the statutes in question presented by these cases, if valid, not only by virtue of the duties pertaining to that office by common law, but as well by the statutes just alluded to.

But there is a further statute which counsel on both sides have overlooked. Chapter I of the Laws of 1907 by Section 61 thereof eliminates all doubt by appropriating twenty thousand dollars per year to be drawn by the Attorney General from time to time—

"which said sum shall be expended under the direction of the attorney general in the prosecution or defense of suits heretofore brought, or that may be brought by or against any railroad company, wherein the validity of any act of the general assembly may become involved or contested."

It will be noticed that this appropriation of this large sum of money is made not only to the end that the attorney general may seek to maintain the validity of any statute brought in question by any case hereafter brought, but likewise covers cases heretofore brought. And in the light of that section appropriating forty thousand dollars for the biennial period of two years, to be drawn by the Attorney General and expended under his direction, leaves no room for argument that it is the duty of the Attorney General to enforce all statutes enacted by the General Assembly and see to it to the best of his ability that no court by decree or judgment holds the state enactments void.

Without scheduling the different statutes, the duties of the Commissioners are likewise plain. They are vested with authority to fix rates, and should the statutes in question be overthrown as being void, they will at once fix some other rate in their judgment valid. The question as to making the Commissioners parties defendant has been put at rest by the case of the Commissioners vs. R. R. 183 U. S. 53.

Again, as when the cases were brought, and first argued, it is urged that the state in effect is being sued in violation of the Eleventh Amendment, and the question has again been argued

346 with force, logic and eloquence. That a determined effort has been made by the use of words, phrasing and forms within the past two years, regardless of substance, effect and meaning, by the states to deprive the United States Courts of jurisdiction vested by the Constitution and laws enacted by Congress, is known by all The argument is to the effect that all litigation of and concerning the

fairness, and validity as well, of state statutes shall be in the courts of the state whose legislation is assailed, leaving the right and the only right of carrying questions of law to the United States Supreme Court by writ of error, but likewise insisting that in cases as to the reasonableness of rates, dependent wholly upon facts, that a writ of error shall be unavailing, and that the state courts of the state whose state legislation is assailed, shall alone and finally decide the case. And that this will be so in a chancery case as well as in an action at law by the only remedy, by writ of error to a State Supreme Court, when the case depends upon questions of fact, has been held by the Supreme Court in Egan vs. Hart, 165 U. S. 188. There are others who believe that all matters both of fact and law arising under the Constitution of the United States should in the end be decided by the only court created for that purpose. So it is that a sharp conflict is presented. Almost from the beginning of our government this question at short recurrent periods has arisen, but generally concluded by the Supreme Court holding that this is a National government with a National Judiciary, and that the National Constitution is and shall forever remain the supreme law of the land, anything in the laws of any state to the contrary notwithstanding. When our government was organized, every of the thirteen states was in debt, and some of them well nigh hopelessly so. In and out of both the National and State Conventions the arguments were for and against whether a state could be sued in a National Court. Hamilton and Marshall and Madison said it could not be done. Patrick Henry with his numerous doubts and opposition was filled with fear. Others like James Wilson and Edmund Randolph said the state would and ought to be suable by a citizen of another state for wrongs
347 done. Near the end of Washington's first term, the famous suit of Chisholm vs. Georgia was decided, the holding being that Chisholm, a citizen of South Carolina, could recover judgment for money that the State of Georgia justly owed him.

It is said that within two days from that decision, a resolution was offered in the Senate to amend the Constitution to prevent such suits, by declaring that the Judicial power shall not extend to any suit against a state by a citizen of another state. But that failed because it was urged that notwithstanding the decision in the Chisholm case, such jurisdiction had never extended nor existed. Thereupon new phrasing was adopted, and a new resolution was offered, reciting that "The Judicial power of the United States shall not be construed to extend to, etc.," shortly ripening into the Eleventh Amendment. The only purpose of that Amendment was to prevent a state from being sued by its creditors, and history furnishes the proofs conclusive of the correctness of the statement. Those who are doubtful of this need only read what Chief Justice Marshall said in Cohens vs. Virginia (6 Wheaton).

At common law from time immemorial, a public officer was not allowed to justify under a void law or void order, but was compelled to make restitution of the property taken or to pay damages therefor. And such has been the uniform holdings in this country, and for the reasons that a void statute or void order is utterly without effect

and is wholly unavailing as a defense. Such has been and is the law of England, and such has been and is the law of this country. And why such should not be the law on the equity side of the docket by preventative remedies against threatened wrongs, is difficult to conceive.

But the Supreme Court has held in the cases of In Re Ayres, 123 U. S. 443, and Fitts vs. McGhee, 172 U. S. 516, that in cases wherein the state as a state is affected, that a suit against the officers is in effect one against the state in contravention of the Eleventh Amendment.

It is to be noted that both the cases above referred to would
348 have been decided as they were decided, if taken to the Supreme Court by writ of error to a State Supreme Court, or by appeal from a Circuit Court, if the Eleventh Amendment had never been adopted. This is so because in the Ayres case a full, adequate and complete remedy at law existed, and in the case of Fitts vs. McGhee the sole purpose was to enjoin criminal proceedings. But it is now too late to object to the jurisdiction of a Circuit Court to enjoin the enforcement of a rate statute alleged to be void because confiscatory, although concededly the holdings now are that the test is not whether the state is a party to the record by name, but is the state in effect a party?

But in the case at bar the state as a state has no interest. And the state as a state is not attempting to confiscate property. It is the government of the state, first by its legislature, and then by its officers, who according to the allegations of the railways, are attempting to confiscate property. Whether such acts will amount to confiscation if carried out, relate to the case on its merits. But the point to the whole matter is, that the state is not seeking to act, and no effort is made to enjoin the state, either by name or in effect. And this distinction is not metaphysical, but is a substantial distinction, clearly and unmistakably pointed out by Justice Matthews in Poindexter vs. Greenhorn, 114 U. S. 270, *290,* wherein he said:

"In the discussion of such questions, the distinction between the government of a State and the State itself is important, and should be observed. In common speech and common apprehension they are usually regarded as identical; and as ordinarily the acts of the government are the acts of the State, because within the limits of the delegation of power, the government of the state is generally confounded with the State itself, and oftener the former is meant when the latter is mentioned. The State itself is an ideal person, intangible, invisible, immutable. The government is an agent, and, within the sphere of the agency, a perfect representative, but outside of that, it is a lawless usurpation. The Constitution of the State is the limit of the authority of its government, and both government and
349 state are subject to the supremacy of the Constitution of the United States, and of the laws made in pursuance thereof. So that, while it is true in respect to the government of a State, as was said in Langford vs. United States, 101 U. S. 341, that the maxim, that the king can do no wrong, has no place in our system of government; yet, it is also true, in respect to the State itself, that whatever wrong is attempted in its name is imputable to its government, and

not to the State, for it can speak and act only by law, whatever it does say and do must be lawful. That which, therefore, is unlawful because made so by the supreme law, the Constitution of the United States, is not the word or deed of the State, but it is the mere wrong or trespass of these individual persons who falsely speak and act in its name."

So that it follows that the State of Missouri is not a party either by name, nor in effect. And this Court has jurisdiction both of the subject matter and of the parties, to inquire into the questions in the case and on a final hearing decree whether the rates fixed by statutes are remunerative or confiscatory.

On what basis the Master shall report, is not clear. Every person whether a passenger or shipper, is entitled to have efficient service at reasonable rates, which the company must give for such compensation. Whether such charges for every person can be fixed by a decree, is doubtful, and in any event will be attended with much difficulty. But if all earnings in the state for state business are to be taken in the aggregate, less expenses, the question is attended with difficulties, because of the matter of expense, it being difficult to apportion the expenses between the state and interstate business.

If the parties cannot agree, the Master should be directed by a supplemental order.

These cases should be brought to a final decree, and that decree such as can be carried to the Supreme Court for final determination, and not for a reversal because of an error of the Master or the Court in determining the expenses. What would be still more to the point would be for the Master to determine the expenses from the standpoint of both the railway company and the Attorney General. And there is no valid reason why the cases should not be brought to a conclusion within the next ninety days. And if this is not done the delay will not be chargeable to the Court.

350 This memorandum opinion was written many weeks since, but withheld by request, awaiting the decisions of the Supreme Court in Minnesota and North Carolina cases. Those cases were decided on the twenty-third instant, adversely to the State officers. And it is deemed unnecessary to await the opinion, which this Court has not yet seen.

Kansas City, Missouri, March 31, 1908.

351 The Opinion filed on the 8th day of March, 1909, is in words and figures as follows:

In the Circuit Court of the United States, Western District of Missouri, at Kansas City.

No. 2988.

THE ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY, Complainant,

vs.

HERBERT S. HADLEY, Attorney General of the State of Missouri; Joseph P. Rice, John A. Knott, and Frank A. Wightman, Railroad Commissioners of the State of Missouri, et al., Defendants.

And Seventeen Other Like Cases, Being Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004, 3006.

Mr. Frank Hagerman for each and all of said Eighteen Railroad Companies.

Mr. Herbert S. Hadley, Attorney General, Mr. John Kennish, Assistant Attorney General, Mr. S. B. Ladd, and Mr. Frederick W. Lehmann, for all defendants, in all of said cases.

With Mr. Hagerman the following appeared for the railroads as designated:

Mr. W. F. Evans for St. L. & S. F. R. R. Co.
Mr. M. A. Low for C. R. I. & P. Ry. Co.
Mr. M. A. Low for St. L. K. C. & C. Ry. Co.
Mr. O. M. Spencer for C. B. & Q. R. R. Co.
Mr. J. G. Trimble for Q. O. & K. C. R. R. Co.
Mr. Gardiner Lathrop for A. T. & S. F. R. R. Co.
Mr. S. W. Moore for K. C. & S. Ry. Co.
Mr. Geo. P. B. Jackson for M. K. & T. R. R. Co.
Mr. J. L. Minnis for Wabash R. R. Co.
Mr. R. A. Brown for St. J. & G. I. Ry. Co.
352 Mr. E. L. Scarritt for C. & A. R. R. Co.
Mr. John H. Lucas for K. C. C. & S. Ry. Co.
Mr. M. L. Clardy for Mo. Pac. R. R. Co. and St. L. I. M. & S. R. R. Co.
Mr. J. D. Hostetter for St. L. & H. Ry. Co.
Mr. S. H. West for St. L. S. W. Ry. Co.

Opinion.

SMITH MCPHERSON, *Judge:*

1. Each of the eighteen railroad companies is doing a general railroad business within the State of Missouri, all but one doing both a state and an interstate business. Under the general railroad statutes of the state, the railroads were classified under three classes, the one class being allowed to charge for passenger rates three cents per mile, and the other two classes, four cents per mile. Freights

likewise were classified with certain maximum rates. The Railroad Commissioners of the state were authorized to fix and establish rates, not in excess, however, of these maximum rates fixed by statute.

In the year 1905 the Legislature of the state by statute which took effect June 16th, 1905, provided for certain maximum charges. On the day the statute took effect each of the railroad companies filed their bills of complaint herein against the Attorney General and Railroad Commissioners, asking that they be enjoined from enforcing the statute upon the ground that the rates thus fixed were not remunerative, resulting, as is alleged, in the taking of their property without compensation. A restraining order in each case was issued, and within a few days thereafter upon notice and full hearing, a temporary writ of injunction as prayed was issued. Several months thereafter the cases were referred to a Special Master to take the evidence and make his findings of fact and report the same to the Court.

353 In 1907 the Legislature of the state repealed the statute of 1905 and enacted a substitute therefor, which act was to take effect in June, 1907. On or about the day the statute was to take effect, each of the complainants filed its amended and supplemental bill setting forth the pendency of the actions and the action theretofore taken by the Court therein, and asking that the enforcement of the statutes, one of which fixes certain maximum freight rates, and the other, passenger rates of two cents a mile, be enjoined on the ground that such rates were not remunerative, but confiscatory, and if enforced, would be taking the property of the railroad companies without compensation. At or about the same time the state officers instituted proceedings in certain State Courts of Missouri against the railroad companies asking for an order that said two statutes of 1907 be enforced.

The Attorney General and his associates insisted that an entirely new situation was presented and insisted that the proceedings were instituted in the State Courts in advance of filing the Supplemental bills herein, and insisted that the State Courts had first acquired jurisdiction of the subject matter which would be to the exclusion of any action by this Court. The railroad companies insisted that the general subject matter was covered by the original bills of complaint and defendants' answers thereto, and that the statutes of 1907 should be carried forward by supplemental bill. It was likewise most earnestly contended that the actions in this Court were in effect against the State of Missouri in contravention of the Eleventh Amendment to the Constitution of the United States. But this Court after the fullest argument and consideration adjudged that this Court was not seeking to take jurisdiction against the State of Missouri as a state, and that the very office and nature of the supplemental bill as recognized from time immemorial by the equity practice required this Court to take cognizance of the supplemental bills and proceed with the litigation. (161 Fed. 419.)

In June last by agreement of parties, the Court revoked the previous order of reference to the Special Master and directed him to

return to this Court the evidence he had already taken, and
354 ordered that the case be tried upon oral testimony and such documentary evidence as the respective parties might offer. The evidence has been concluded, and the cases have been fully argued, and are now for final decree.

2. Many believe that the better and safer practice would be to confine all litigation to the State Courts wherein is involved the validity of rates to be observed by railroads and other public utilities when such rates are fixed by ordinances of a city or statutes of a state. It is insisted that this would be more deferential and more in a spirit of comity to first allow the State Courts to pass upon such questions. It is urged that the decree of a State Court could be carried to the Supreme Court of the United States for final decision.

This is plausible and convincing to men who have not thoroughly considered the question. It is plausible, because such a course can be followed. But every thoughtful and patriotic man well knows and believes in the proposition that the Supreme Court of the United States should ultimately pass upon all questions arising under the Constitution of the United States. And the question whether rates thus fixed by ordinance or statute are confiscatory or remunerative, is one arising under the Constitution of the United States, and that question is wholly a question of fact, and is not longer an open question as to the law. This being so, the question cannot be passed upon by the Supreme Court of the United States on these questions of fact when there is a conflict in the testimony. Section 709 of the Revised Statutes of the United States is the only authority for taking a case from the highest court of a state to the Supreme Court of the United States, and the procedure thereby allowed is by writ of error. And the office of a writ of error is to authorize an appellate court to review questions of law and not to review questions of fact. So that when a case goes from the Supreme Court of a state to the Supreme Court of the United States, it can only go by writ of error, and the Supreme Court of the United States necessarily must take all questions of fact as being foreclosed by the State Courts. Therefore, when the case is wholly dependent on controverted
355 questions of fact, it is utterly useless to carry the case to the United States Supreme Court from the decision of the State Courts, as an affirmance necessarily will be ordered, and the question as to whether the United States Constitution is being trampled down cannot be considered. There is no other method of reviewing the decision of the State Court by the Supreme Court of the United States than by writ of error, and this is so in chancery cases as well as in actions at law.

State Corporation Com. of Va. v. Atlantic Coast Line Co., recently decided by the Supreme Court of the U. S.

Bement v. National Harrow Co., 186 U. S. 70, 83.
Dower v. Richards, 151 U. S. 658, 666.
Egan v. Hart, 165 U. S. 188.
Adams v. Church, 193 U. S. 510.
Chrisman v. Miller, 197 U. S. 313, 319.

It follows that all efforts to enforce the trial of such questions in State Courts would result, if successful, in having the State Court finally determine when the National Constitution as the supreme law of the land, shall be applied. The Supreme Court of the United States is the tribunal to finally determine all questions, including those of fact, wherein the National Constitution is involved.

3. Upon their face the statutes in question are with reference only to state commerce. But it is urged that they are void because in effect they directly have to do with interstate commerce. The facts are as follows:

Between Kansas City and the Joplin mining district there are three lines of railway. The Missouri Pacific between these points is wholly within the state, and the other two, partly within and
356 partly without the state, and therefore between the two Missouri cities of Kansas City and Joplin, are doing an interstate business under the decision of Hanley v. R. R., (187 U. S. 617). The same situation exists between the cities of St. Joseph and Kansas City, two of the roads being wholly within the State between the two points, and two partly within and partly without.

And between the cities of St. Joseph and St. Louis such situation is emphasized, the Burlington road being wholly within the state between the two cities, and the Missouri Pacific a part of the distance being within the State of Kansas. The facts are that when the Missouri statutes lowered the passenger rates on the roads wholly within the State between said points, the interstate roads between said points were compelled by competition to lower their rates to correspond with the state rates thus fixed by statute. By reason thereof the argument is that the Missouri statutory rates control the interstate rates between the cities named, and therefore are void as being in conflict with the Commerce Clause of the National Constitution.

During the period of railroad building, for a time the western termini were at the Mississippi River. By reason thereof, and by reason of competition on account of river transportation, the railways fixed rates from the East to that river. After a time roads were completed to the Missouri river. Rates to points on that river were fixed on rates to the Mississippi River, plus rates between the two rivers. And for thirty years or more rates have been thus fixed. And as the Missouri statutes lower the rates between the two rivers, the argument is that the statutes lower the interstate rates from the East to Missouri River points, and to points to the West.

This presents a great question, and one which is far reaching and in importance cannot be overstated. In the great case of Ex parte Young, (209 U. S. 123,) decided but last year, the Supreme
357 Court in its majority opinion in speaking of this said: "The question is not, at any rate, frivolous." But the point was not decided. But here the question is fairly and sharply presented for decision, with no precedents directly in point.

From the days of the Confederacy to the present time there have been clashings between the National Government and the States, owing, in part to the ever changing trade and commerce, and in

part to the different schools of belief as to our system of government. And the pendulum will ever move back and forth. Even those who most strongly denounce the Kentucky Resolutions, and the doctrine of nullification, are often the first to forget that they believe in not only the express but the implied powers of our government as taught by Marshall in McCullough v. Maryland (4 Wheaton) and that this government is one of the whole people. Such as thus believe are often the first to advocate and rush through in the form of state regulation, measures for their own state, regardless of the rights of the people of other states. Neither the Ohio River, nor any other boundary has been the dividing line. Many of the cases in which state statutes have been declared void by the Supreme Court are statutes requiring a license to sell imported goods; imposing a tax on bills of lading for gold carried out of the state; imposing taxes on alien passengers; imposing taxes on passengers and merchandise carried into or out of the state; taxing drummers; regulating telegrams sent to other states; taxing those who use wharves; requiring inspection of animals for slaughter; and other like statutes in principle. All such statutes have gone down by reason of the Commerce Clause, and the uniform holdings of the Supreme Court.

The Commerce Clause gives Congress the power to regulate commerce:

1. With foreign nations;
2. Among the several states;
3. With the Indian tribes;

358 As to the first and last no doubt Congress can not only regulate, but can prohibit. It is another proposition whether commerce can be prohibited among the states.

One of the methods resorted to for the construction of Constitutional provisions, as well as of statutes, is to ascertain the then existing evils. We find that New York and other sea coast states placed burdens on commerce from inland points to sea coast points and across such states for shipment by water. It was burdens on commerce that the inland localities complained of, and that such burdens should not be imposed, was the reason for adopting the Commerce Clause. If there had been no such burdens, it is likely that there would have been no Commerce Clause, and possibly no Constitution. I have searched diligently, but find no case decided by the Supreme Court declaring a State statute void that did not in some form and in some manner place a burden on, or in some way hamper or obstruct, commerce from or to another state.

The case of Louisville & Nashville R. R. v. Eubank (184 U. S. 27), comes more nearly sustaining the proposition that the Statutes of Missouri impinge upon the Commerce Clause than any other case that I recall. There the State of Kentucky by its Constitution provided that more should not be charged for a short than a long haul. The Company had rates in force from Nashville, Tennessee, to Louisville, Kentucky, which were less than was being charged from points in southern Kentucky to Louisville. This was held

by the Court of Appeals of Kentucky to be in violation of the State Constitution. So that we have a case of a state law, with the decision of the State Courts read into it, providing that more shall not be charged for a short haul wholly within the state, than for a long haul partly without the state. This must be so, because the same provision of the Kentucky Constitution when applied to places all within the state was upheld by the Supreme Court, as will appear from the case of Louisville & Nashville R. R. v. Kentucky, 183 U. S., 503.

259 And the case of Wabash &c., R. R. v. Illinois, 118 U. S. 557, was decided in like manner, because and for the only reason that the Supreme Court of Illinois had so ruled as to read into the statute the objectionable feature.

But the Missouri Courts have not so construed these statutes of the state. When they do so decide, then the Eubank, and Illinois cases will be the precedents to thwart such legislation as thus construed. In the meantime there is no belief that the Missouri Courts will so decide.

The case of Hall v. De Cuir, 95 U. S. 485, is cited by counsel for the railways. Louisiana had a statute requiring carriers to receive and carry passengers without distinction on account of race or color. The steamboat in question plied between New Orleans and Vicksburg, doing both a state and an interstate business. The vessel was duly enrolled and licensed for the coasting trade. The boat had an upper and a lower cabin, the upper for white people, and the lower for colored persons. The plaintiff De Cuir was a colored woman, and took passage at a landing in Louisiana for another landing in that state. Being refused admission to the upper cabin, solely because she was colored, she was awarded damages in a State trial court, which judgment was affirmed by the State Supreme Court. The Supreme Court of the United States reversed the judgment. Two reasons were given for the reversal, the one by Justice Clifford on the ground that navigation of the Mississippi River is wholly within the control of Congress. The other opinion was by the Chief Justice who grounded his opinion upon the proposition that with the objections of most people to associating and rooming with colored persons, that to allow a colored woman to be carried in the first cabin, even though but for a ride within the state, would drive white passengers seeking an interstate ride from the boat. Or, as I have hereinbefore stated the statute in effect placed a burden on the interstate business. After discussing the question, and the many and great difficulties in applying the Commerce clause, the Chief Justice said:

260 "But we think it may safely be said that State legislation which seeks to impose a direct burden upon interstate commerce, or to interfere directly with its freedom, does encroach upon the exclusive power of Congress."

The State statute in order to be declared void, must by its terms and recitals interfere directly with commerce to or from another state, or the statute by construction given it by the highest court of the state must so operate in its results. But here we have no

such recitals in the statute, and it has not been so declared to mean by the Missouri Courts. And while counsel for the railways do not in terms so insist, they in effect urge that the laws of political economy, custom and convenience shall act as a substitute for Missouri statutes, and the decrees of the Missouri Supreme Court. In other words, they in effect, and I believe in language insist that the rules formulated a third of a century ago for making rates first to the one river, and then between the two rivers, and the laws of competition, shall be regarded as the equivalent of statutory law. I am mindful that it is believed by many that to not recognize these laws of trade, will impair if not destroy the great cities like St. Joseph, Kansas City and St. Louis. I am mindful of the fact that between the two rivers the distance by the Burlington is but 198 miles, with others roads 300 miles or more, and that the shorter road necessarily fixes the rates between all points on the rivers. But competition does that, and the statutes are silent. The statute may or may not be unfair. I am considering the Commerce Clause as to its bearing on statutory enactments, and am not forgetting that many valid statutes are unfair, and some even unrighteous.

I have believed heretofore that the rights and duties, powers and prerogatives of any one state are the same, neither more nor less than those of any other state, and this is so whether we compare two or more of the original Thirteen, or one of the older with one of the newer states. But in effect the argument of counsel for the railways is that this is not so. Missouri and Maine
361 were admitted into the Union the same day by the same enactment. Maine has but its percentage of commerce into and out of the state, with no trans-state business by reason of its geographical position, and has no large city. Missouri is a central state, with large cities, one of which is third in importance as a wholesale center, and second to but few as a manufacturing place. St. Louis and Kansas City are the gateways for both commerce and passengers, surpassed only by one, or possibly two other places. These facts are of tremendous importance to those who legislate either for the state or the nation. That legislation can be harmful to these great interests, any thoughtful person can readily see. But that these facts, important as they are, can be used to give a construction to or coloring of the Commerce Clause, I do not believe. In my opinion it is much the wiser to contend for the strength and power of the nation, by insisting also upon the rights and powers of the states as was intended they should have. For a third of a century it has been the recognized constitutional construction that the states have the power within defined limits to regulate charges by railways wholly within the state. And to now say that one state like Maine can regulate charges by a railway for transportation wholly within the state, and that Missouri cannot because flanked by two great rivers, and by a long time custom in fixing rates, is to announce a rule not heretofore recognized, and in my opinion one entirely illogical.

It may or may not be true, that it would be for the better to have all the interstate railways of the country, doing both a state and an interstate business, under one supervising authority, such as a commission, regulating both classes of business. But under the Commerce Clause can this be done?

Employers' Liability cases, 207 U. S., 463.
Wabash R. R. v. U. S. (7th Circuit) — Fed. Rep. —.
9 Columbia Law Review 38.
U. S. v. Colorado &c. R. R. Co. 157 Fed. 321 (8th Circuit).

362 Difficult as these problems are, they can and will be solved, and for the right. Pessimists discourage. However, their statements that everything is wrong, and will grow worse, must be heavily discounted. Because railway systems reach into many states and are units, crossing state lines arbitrarily fixed, a hopeless condition is not thereby brought about. It is not true as some say, that each state can lower the rates to confiscation, as all know who have read the decisions to any purpose. I believe as firmly as does anyone in the power and the rights of our general government, and when the clashings come as to the power of the state and the general government, let the doubts be solved in favor of the government. But as to some matters there are no doubts, and two of these are that the Constitution is the supreme law of the land, and that as to all local matters the states are in control. All should insist upon both.

4. It is contended that the statutes are void because of the excessive penalties, reliance being based on the case of Ex parte Young, (209 U. S. 123). Until the decisions in the Minnesota cases, (134 U. S. 418 and 467) it was an open question whether a review of rates fixed by a legislature or a commission acting under a legislative authority, could be had by the courts. The Minnesota statute authorized a commission to fix certain rates, which rates thus fixed should be final and conclusive. The Supreme Court of the State adjudged that such rates were not merely advisory, nor prima facie reasonable, but conclusive and not subject to review by the courts. (37 N. W. 782.) But the United States Supreme Court reversed that decision, and notwithstanding the strong dissenting opinion by Justice Bradley, concurred in by Judges Gray and Lamar, and Justice Miller hesitating, the question is now at rset, and the courts not only can, but must, determine the question whether such rates are reasonable.

In time the Legislature of Minnesota believed it could in another way make its determination as to rates conclusive and beyond the powers of the courts to interfere. This was
363 attempted by providing penalties for violations, to that which was equal for one week's business to life imprisonment for all officers and agents, and confiscation of all the railway property, if resistance by litigation was made, and such litigation failed. The decision in Ex parte Young followed, the Supreme Court failing to see the distinction between a statute pro-

viding that agents should become felons with life imprisonment pronounced, and all corporate property seized and confiscated, if an unsuccessful contest should be made in the courts.

The Statute of Missouri of April 15, 1905, covered by the original bills herein, fixes the only penalty for violations by allowing treble damages, and a reasonable attorney's fee. Citation of authorities need not be made to sustain such penalties. And in any event that statute has been repealed. The two cent passenger rate statute of February 27, 1907, provided for a penalty of not less than one hundred nor more than five hundred dollars. What shall be deemed a complete or separate offense is not defined. The freight rate statute of March 19, 1907, provides for no minimum penalty, but the same shall be a fine not exceeding five thousand dollars. Imprisonment is not designated under either statute, unless by some general statute for the non-payment of the fine; while under the Minnesota statute the penalty for each offense was fixed at a fine of not more than five thousand dollars, or imprisonment in the State prison for not more than five years, or both.

This objection to the Missouri statutes is without merit.

5. Evidence is before the Court tending to show that a large number of men have been discharged from the service of the railroad companies by reason of the reduction of rates. And this fact is urged as one element that should be considered. It is true that before interest can be paid on the bonded debts, that operating expenses, including labor, and materials, largely made up from labor, must be paid. And as of course all of these including interest must be paid before dividend checks are issued. The states should
364 and usually do attempt to legislate in the interest of laboring men. And if the legislation under consideration is hostile to their interests, the legislature, and not the courts have the responsibility. I agree to all that was said in argument in their behalf. I agree that in sobriety, and intelligence, and faithfulness to duty, they are surpassed by no other class of men. Their dangers are great, and the people owe them much. But if employés are reduced in number, or now or later on their compensation will be reduced, and if such results are by reason of legislation, then their remedy, if they have one, must be sought elsewhere than in the courts.

6. It is urged in argument that the reduction of rates will impair the service to the public. The charter of a railroad is an implied contract with the state. The company is given such right under such contract to perpetually operate its road. The state agrees that it shall be reasonably and sufficiently remunerated according to the business done. The company agrees to furnish reasonably efficient service. To furnish no service is a complete breach of the contract. To furnish a partial service is a partial breach. What is a reasonable service, is a question of fact dependent upon the circumstances of each case.

Thus it is that the Supreme Court has held that in some instances state legislation is valid which requires through and interstate trains

to stop at important towns to let off and take on passengers, state and interstate.

Mississippi v. R. R., 203 U. S. 335.
L. S. & M. S. Ry. v. Ohio, 173 U. S. 285.
Gladson v. Minnesota, 166 U. S. 427.

And in other cases such state legislation has been declared invalid.

R. R. v. Illinois, 163 U. S. 142.
R. R. v. Illinois, 177 U. S. 514.
R. R. v. South Carolina, &c., 207 U. S. 328.

365 All those cases turned on the facts, and the question of fact was as to the service the public should have.

Of course the service rendered and the compensation received should have a proper relation. The expenses incident to, and that can be specifically located in connection with, a particular train, are not all the expenses to be accounted for, as will hereafter be discussed. But it is true that without reasonable compensation there cannot be reasonable service. It is common information that the public in many localities is demanding increased service.

But this phase of the question is so indefinitely covered by the evidence, and is so general in the very nature of the question that no decree can be rendered herein that will cover the proposition.

7. It is urged that these statutes are void because they are not enforceable as to some of the railway companies within the state, and the claim is, that being void as to some, they are void as to all. It is conceded in argument that as to two roads, the St. Louis & Hannibal, and the Kansas City, Clinton & Springfield, the rates fixed are not compensatory. The State's experts agree to this.

Usually statutes fixing rates for railroads to observe, classify the roads according to their earning power, and fix the highest rates for those earning the least. But this was not done, except that railroads of a length not greater than forty-five miles not owned nor leased nor controlled by a trunk line, may change four cents per mile per passenger.

The sole theory upon which rates are adjudged void can only be that the rates are not compensatory, and to so decree, the Court must have the complaint of each and every road making the claim. Complainants have recognized this by their counsel in bringing as many independent actions as there are railroads complaining. Whether there are any other railroads within the state than these eighteen complainants, neither the allegations of the pleadings nor the
366 evidence show. Perhaps the court should take judicial notice of whether there are other roads or not. Be this as it may, the Court is not advised. I assume there are no other roads within the state than these eighteen.

The record shows that two of the cases, those brought by the Rock Island and the St. Louis, Kansas City & Colorado, have been consolidated for trial purposes, the one road having become the owner of the other since the litigation commenced. The record further shows that nine cases were tried, and that the other eight cases were

to be covered by decrees the same as decrees in some of the cases tried, the particular cases being designated by the record. All this shows to my mind that complainants' counsel rightly conceived the theory upon which these bills of complaint were presented. The record shows further that before the Master, there were many attempts for position on both sides as to what cases should be tried, the Attorney General and his associates desiring that the Burlington and two other strong roads having the short lines, should be heard, and the others either continued, or that decrees in the other cases should follow the decrees in the cases of the strong roads. Counsel for the railroad companies were desirous of trying the cases brought by some of the other companies, or at least that the roads should be classified into three or four classes, but that the Court should hear only one case of each class. This emphasizes the theory that was in counsel's minds all the way through this litigation.

In one respect at least it seems to me that these statutes should be declared valid or void as the facts may warrant, as has been frequently done with reference to ordinances of cities. The ordinances of cities regulating speed both for trains and teams are declared unreasonable, and therefore not enforceable as to some parts of the city, and valid and enforceable as to other parts of the city not so densely populated. These statutes are not void upon their
367 face. The company which alleges that they are void must make a showing that the rates considering all the facts and circumstances are not compensatory as to that particular road, failing in which, the statute will be enforced, and successful in which, as to that particular road the statute will not be enforced.

The case of R. R. v. McKendree, (203 U. S. 514,) is not in point, because there the question was with reference to an order of the Secretary of Agriculture which was void in part and was not separable, it not being possible to eliminate the valid from the void features.

The Cotting case (183 U. S. 79,) was decided by reason of an entirely different principle. The statute in that case on its face shows that a company doing little business was not to be regulated, while the company doing much business was made subject to the statute. And by reason of that vice, the statute was held void. That the Cotting case is not in point, see:

St. Louis &c., v. Illinois, 185 U. S. 207.
McLean v. Arkansas — U. S. — (January 4, 1909).

The Connolly case (184 U. S. 540) was likewise decided in part at least because the statute did not apply to all classes of persons engaged in a like business, and that the statute was not separable, the valid from the invalid.

The case of Ju Toy, (189 U. S. 253) the Trade Mark cases, (100 U. S. 82,) and the recent case of Howard v. R. R., (28 Sup. Ct. Rep. 141,) were decided by reason of this same principle, namely, as to whether the statute is separable or not.

Therefore the holding is that these statutes are not void upon their face, and cannot be declared void for the one reason that the evidence shows they are not enforceable as to two or more roads.

8. The state earnings are made known to a certainty, concerning which the experts on both sides agree. And whether in earning them the company gains a profit, or sustains a loss, is dependent upon the expense in making such earnings. Some of these expenses can be definitely specified, but others, like maintenance of way, sal-
368 aries of all officers including ticket agents, handlers of freight, terminal expenses, compensation of many laborers, and other things, are all occasioned for carrying both freights and passengers, state and interstate and miscellaneous of each. And herein is the problem how to make the apportionment.

The track mile, or train or car mile does not furnish the solution, because everyone agrees that neither of those methods will do, and no one of the experts or counsel on either side asks for such a solution. Therefore there is and can be but one of two methods adopted. Neither can be relied upon if mathematical precision is demanded. But the one more nearly correct and satisfactory, is the one to be adopted. And that is what is done in litigation concerning injuries and death; the age, earning power, loss of time, can be fixed, some with certainty. How many years the party had before him is fixed by mortality tables, wholly unreliable as to the individual, but fairly certain as to the average.

In taking property under the power of eminent domain, we know the assessed value, the amount of taxes, the rents, and maintenance. Some or all these elements are put in evidence, while all other is matter of opinion, concerning which witnesses and jurors differ. And so it is in most litigation.

9. The theory to now recognize must be either the proportion of earnings, state and interstate, or ton and passenger mile.

That it costs more to carry either freight or passengers proportionately for a short than a long haul, is undoubtedly true, although all the elements are not more expensive. Local trains generally have poorer and older and cheaper cars and locomotives. But their speed is greater between stations. There are many stops. They carry proportionately much greater dead weight. They do much switching, and there are many delays. Their crews are paid more proportionately to distance and what is carried. The trains are daylight trains only. With freight the carload and number of cars are much the less, and from station to station grows less, and is largely made up of single parcels, boxes, and individual shipments from as many consignors to as many consignees, first put in one sta-
369 tion and at the end of the trip, into another station by the company. Usually there are two terminals, comprising an enormous amount of the investments and expenses of the company. The local train is seldom loaded to the capacity of the engine, to the loss of much of the investment and expense. The clerk hire, selling tickets, issuing bills of lading, making expense accounts, and auditing and making records, are attended with like expense for the small and the large items. Many stations would be done away with but for local business.

In nearly every instance enumerated, as to the interstate, which includes trans-state, the reverse is true, although much magnified in

my opinion as to terminals, and particularly as to trans-state, because in my judgment some of the interstate business has two terminal expenses within the state. The two gateways in Missouri through the one or the other of which a large percentage of business both interstate and trans-state passes, are Kansas City and St. Louis. And at both of those places the investments are very large, and of course whether owned or rented, the expense is practically the same. But these terminals are for both. And while I believe the terminal expenses at St. Joseph, Kansas City and St. Louis as to trans-state business is minimized, I do not agree with the experts who claimed that there are none of those expenses. Their cross examination shows this to be a mistake.

But from the great weight of the testimony, it can well be said that the ton mile is not reliable, and the revenue is more nearly correct, as showing that it costs more by twenty-five per cent. to carry passengers, and fifty per cent. to carry freight locally than it does when interstate. Generally speaking this is undoubtedly true. There are exceptions, one of which is shown by the Burlington with its three roads from St. Joseph, the one to Villisca, Iowa, another to Creston, Iowa, and a third to Chariton, Iowa. They are all interstate roads, each with two terminals, but each operating only local and daylight trains. The Wabash illustrates this with roads across the arbitrary state line between Missouri and Iowa. And there are other illustrations, but less noticeable, in the testimony.

370 But all these are exceptions and the testimony establishes the rule as stated.

The Missouri Legislature has recognized the proposition in all of its rate statutes, and particularly in the statutes now assailed, that it costs more per mile for a short than a long haul.

See Act approved April 14, 1905; and the Act of April 15, 1905, covered by the original bills herein. The passenger rate statute under consideration fixes a two cent fare for all trunk lines, and four cents per mile for a road less than forty-five miles in length.

The freight rate statute under consideration, in every schedule recognizes the principle that proportionately there should be more charged for a short than a long haul. For instance, Class D allows a charge of five cents per hundred for carload lots for the first twenty-five miles, and one half cent for the second and additional twenty-five miles.

And commencing with the statute of Pennsylvania of 1846 chartering the Pennsylvania road, to the present time, every statute upon the subject fixing freight rates, and many of them fixing passenger fares, recognizes this principle. So that while it is a legislative function to fix rates, we have innumerable legislative recognitions of the greater cost for weight per mile for a shorter than a longer haul, and in some instances as to passengers. And no state has so recognized this to a greater extent than has the Missouri Legislature.

And the courts passing upon the question, have invariably recognized this as being so, and that the revenue theory is the correct one as against the ton mile.

This was so recognized by the Supreme Court of Pennsylvania in

case of Railroad v. Pennsylvania County, 68 Atl. Rep. 677, but not discussed.

In R. R. Co. v. Tomkins, 90 Fed. 363, Judge Carland, of the South Dakota District, in passing on the statutes of that state, said:

371 "This Court believes that it is fair and just to first ascertain what per cent of the total gross earnings in any one year the total local earnings are for that year, and having ascertained that per cent. to take the same per cent. of the total value of the property as a fair value upon which to fix local earnings."

The decree was reversed, and although an equity case, remanded because of a failure to make a material finding. (176 U. S. 167.) The same case under the title of R. R. Co. v. Smith, 110 Fed. 473, on final hearing resulted in a decree enjoining the rates, and the question of expenses was arrived at by the extra cost and on the revenue theory.

The case of R. R. Co. v. Keyes, 91 Fed. 77, is an opinion by District Judge Amidon, concurred in by Circuit Judge Thayer, enjoining North Dakota statutory rates. The argument of the opinion condemns the ton mile theory, and adopts the revenue theory. The criticism of the case is, that conditions in sparsely settled North Dakota are not like those in this state. But the question of which theory was the more accurate for computation, was fully covered, and the ton mile was condemned.

In re Arkansas R. R. Cases, (163 Fed. 141) decided but a few months since by Judge Van Devanter of this Circuit, a temporary injunction was issued against the enforcement of the Arkansas statutory freight and two cent passenger rates. And in most respects the State of Arkansas with reference to rates is like that of Missouri, especially the south half of Missouri. Judge Van Devanter in discussing this question, said:

"Other standards are suggested, but the proofs indicate that none of them is as satisfactory or accurate as is the difference in cost in its relation to the revenue."

And the proofs, including statistics and tables and some of the same expert witnesses on each side, were the same as in the cases at bar.

The great case from Nebraska of Smyth v. Ames was heard on the Circuit by Justice Brewer on oral testimony, as the cases at bar have been heard. The entire discussion of the question by Justice

372 Brewer in a lengthy opinion is on the extra cost and revenue theory, entirely ignoring the ton mile theory. That case resulted in the state statutory freights being enjoined by Justice Brewer, District Judge Dundy concurring.

The case was carried to the Supreme Court, (169 U. S. 467,) resulting in an affirmance of Justice Brewer's decree. The opinion of the Supreme Court by Justice Harlan is exhaustive, and the tables used by him to show the facts, and the entire argument is with reference to the extra cost and revenue theory, utterly ignoring the ton mile theory.

Recurring to the Tomkins case, (90 Fed. 363) above alluded to, that case was reversed by the Supreme Court, (176 U. S. 167) and

the question of fact was only discussed from the revenue theory. The reversal was only because the lower court recited that it was unable to ascertain what was the actual cost of earning the local earnings for certain years. But as the lower court on the first hearing proceeded on the extra cost and revenue theory, and as that was what was discussed by the Supreme Court, and under the Mandate the case went to decree, (110 Fed. 447,) on the revenue theory, I am convinced that the Supreme Court for the guidance of trial courts has adopted the revenue theory as the one more just and equitable both to the patrons of the road and to the companies.

So that we have the Supreme Court in the two cases recognizing the revenue theory. Two Circuit Judges of this Circuit have so held. And the same holdings have been made by at least three District Judges, and the Supreme Court of Pennsylvania impliedly, although the argument in that opinion is not strengthened by reason of a statement as to the measure of proof, concerning which the minority opinions without doubt are correct.

As an argument against the revenue theory, and for the ton mile theory, no court has spoken in so far as counsel on both sides and I are advised. In some phases this is a question of fact, or logic, or argument, or opinion, partaking of all. But so many eminent courts have thus spoken, even though not a question of law, and even though the traffic in the states differ, yet such opinions tend most strongly to create an undoubted belief that the cost for carrying both passengers and freight locally is greater proportionately than for doing a long or interstate business, and that the
373 revenue theory is the only one to apportion the cost of each business.

The Wisconsin Railroad Commission made an exhaustive and thorough investigation of these questions two years since. Evidence of both sides was heard. Experts interested, and those not interested, testified. Many months of time were given to the hearing and in reaching conclusions. A valued report was the result. The findings and conclusions were:

1. The cost of carrying local and state freight is greater than for carrying interstate freight and passengers.

2. That this extra cost must be considered, and then take the gross earnings as the basis upon which to allot expenses between the state and interstate business.

3. That less than two and one half cents per mile for local or state passengers was not remunerative in the State of Wisconsin.

10. When the statutes in question were enacted, it was believed by many that by reducing the fare, there would be much more travel. For a month or so this proved to be true. But with the novelty gone, the testimony shows that the increase has been less than three per cent. and more nearly one per cent.

It was likewise believed by many that with the abolition of passes and other forms of free transportation, that expenses would be lessened and receipts increased. Ministers sometimes received free transportation, but generally at half rates. Many lawyers and doctors received passes under guise of retainers for services never

performed. Bankers received them under the claim that it was compensation for signing bonds, and cashing Chicago and St. Louis exchange. Politicians demanded, extorted, and received them for supposed influence. Officials received them as a courtesy. Many newspaper concerns received them, from the proprietor and editor-in-chief down to the typesetter, (relatives included,) under the pretense that it was an exercise of liberty of contract, for which the newspaper published the arrival and departure of trains, with an occasional local and sometimes abbreviated plate matter. To receive them was often followed by charges of corruption; and to
374 refuse them, by charges of demagogy. Every person conceded it to be a wrong system, and most people were advocates for its abolition, except as to the class to which he belonged. But it was abolished, and does not longer exist, and the evidence shows that as to state earnings, the passenger revenue is increased by reason thereof less than one per cent.

11. This leaves but one question for decision, and that question largely one of fact. The question is whether the traffic wholly within the State of Missouri generally referred to in the evidence as local traffic, can be carried under the freight rate statute of 1907 and the passenger fare statute of 1907 at such profit as will give a reasonable return after paying expenses upon the investment, or whether such traffic is carried at a loss or less than such reasonable profit.

Thousands of pages of testimony, taking weeks of time, have been filed. This testimony was orally presented, part to the Master, and part to the Court, accompanied with volumes of statements, reports, schedules and tables. Every phase of every question of both debit and credit has been worked out, tabulated, and filed. These exhibits are the result of something like one year of work by the expert accountants representing both sides, as a result of their examinations of train reports, waybills, auditors' books, and of the accounts of the passenger and traffic departments of the several roads. This work required not only much time, but energy, and patience, and learning, and great skill. But each side had accountants of the highest character, and possessing all of those qualifications. The four accountants, Mr. Peabody and Mr. Johnson representing the railway companies, and Mr. Taliaferro and Mr. Hamilton representing the State, impressed me after hearing them testify and being in consultation with them for ten days after the cases were submitted, that the sole purpose of their work was to exhibit the truth, differing only as to extra cost, and that difference of extra cost largely confined to the local passenger traffic, and differing as to the theory as to how the expenses between local and interstate
375 traffic within the state should be divided. Aside from those two questions there is not the slightest variance between the testimony of the experts upon the two sides. During the ten days following the submission of the cases, they and the Court being alone, at the request of the Court they prepared a statement in each of the nine cases submitted, which have been ordered filed. To each of the nine statements is appended a certificate showing the time

covered, and that such statement correctly shows the results of the various assumptions set forth therein, which certificates were signed by the four expert accountants. Seldom, if ever, is a Court under greater obligations to expert accountants representing the two sides, than the Court and all parties, the railroads and the public, owe these four gentlemen. Usually experts representing different sides do not agree to anything. Here experts representing the different sides agree to everything pertaining to the accounting, the differences only arising as to the basis.

The Court is likewise much indebted to counsel on both sides, who for four days argued these cases with a fairness, and wealth of learning and eloquence seldom displayed at the bar. And now after the fullest investigation of the record, the Court has reached the conclusion that upon this question of fact the statutory rates fixed by either and both statutes are not remunerative. And it only remains for the Court to give the reasons for such conclusion.

And in giving these reasons, clearness is added by eliminating those things so clearly established by the evidence, or so nearly conceded in matters of law as not to be debatable.

1st. The unquestioned and undoubted rule is that there is a presumption both of fact and of law in favor of the validity of every legislative enactment. The railway companies have the burden of removing this presumption, and showing that the statute clearly, or as some Courts say, palpably, and others say, beyond a
376 reasonable doubt, that the statute is invalid. In these cases the Court has recognized this rule. The authorities upon this question form a long and unbroken line, with the single exception of the majority opinion in the Pennsylvania case decided a year ago (68 Atl. Rep. 676). And that one authority is not persuasive.

2nd. All testimony and argument bearing upon the question as to what consideration the Legislature of Missouri gave to these enactments, is utterly immaterial. Much was said in argument as to the message of Governor Hughes of New York two years ago in declining to approve the two cent fare statute of that state. Governor Hughes had the moral courage to veto a measure of popular favor because as he believed the question had not been fully considered. But the relations of a governor to proposed legislation, and those of a Court to legislation consummated, are entirely different.

3rd. Most of laymen and many lawyers believe that the question is whether the railway company as a system is earning sufficient revenue upon the value of the property of the system. They believe that if the Burlington, Santa Fe, Wabash, or any other railroad system is earning such money as will pay all charges and expenses including taxes and interest, with reasonable dividends to the stockholders, that state rates for state business must stand. Of course no one believes this who has given the slightest attention to the question. That precise question was before, and was decided by Justice Brewer, (64 Fed. Rep. 165,) and affirmed by the Supreme Court in the Nebraska case of Smyth v. Ames, (169 U. S. 466). The only question is as to Missouri rates, less expenses properly charged

against the same. And if this balance does not leave sufficient to pay a reasonable return, the law is invalid. And if the railroad system of any company is earning more than a reasonable return by reason of interstate rates, which affect the people many times more than local rates, and if such interstate rates are too high, Congress either acting alone or through a Commission must make the corrections.

377 The Supreme Court during the present year in th ecase of City of New York v. Consolidated Gas Company of New York (211, U. S. —) decided that six per cent was fair and right to be given to the owners upon the true valuation. My opinion is that while a gas plant is in some respects different from a railroad, that a railroad property, properly built, and properly managed, should over and above expenses make a return of six per cent per annum. And considering all the evidence, the evidence fairly shows that all of these roads were properly and economically built and are being properly and economically managed, and that after paying the expenses for maintenance and operation, that there is less than six per cent. of returns, and not more than three per cent. upon any of them and as to some of them a deficit, taking the property as above stated within the State of Missouri at its fair valuation. And this is so without reference to bonds, because in no case do the bonds bear six per cent interest. But taking the bonds into consideration, there is still not to exceed three per cent. returns, and many cases a deficit after considering all debits and credits, upon the true valuation for the state business. There is no evidence that any of the existing bonds were improperly issued either as to amounts or rates of interest. In fixing the value the Court has considered the evidence of witnesses as to the stocks and bonds outstanding, and the Court has considered the evidence of the fact that the Missouri State Board for taxing purposes has valued these properties. Of course those findings are not binding nor conclusive, but they are persuasive. But independently of stocks and bonds, and independently of what the State Board has valued these properties for taxing purposes, the evidence shows the valuations to be as recited in the findings of fact herewith filed, and to which reference will be made in the decrees.

It is absolutely necessary that many trains both passenger and freight do both a local and interstate business. Even the fast trains stopping at but few stations in the state carry state passengers

378 between such stations. And the same is true as to freight trains carrying freight both in carload and less than carload lots.

The valuation of the roads has been fixed by the Court as shown by the findings of fact. The entire state and interstate earnings of each of the roads within the state is known and fixed to a certainty the expenses are known and fixed. To apportion these expenses, must be done according to one of the two theories, and the correct theory is that according to revenue. One theory or other must be applied to both freight and passenger expenses, and the Court should not adopt the one theory as to part, and the

other theory as to another. The one theory is helpful to the one side, and the other theory helpful to the other side, the one theory to the one side in freight, and the other theory to the other side in passenger. But an arbitrary splitting of theories is illogical and unfair, and cannot be recognized. The court has adopted the revenue theory because a great number of the best railroad experts of the country, against a very limited number to the contrary have so testified. Every Court that has ever had this question before it in so far as I am advised by the briefs of counsel and my own independent investigation has so held in the cases hereinbefore cited of the Supreme Court of the United States; in the two cases, by two Circuit Judges of this Circuit; by three District Judges of this Circuit, and by the Supreme Court of Florida, State v. Atlantic Coast Line (37 So. Rep. 657). And Beale & Wyman on Railroad Rates Regulation, Sec. 466 announces such as being the correct rule. The values of the property within the state have been fixed by the Court. The entire earnings within the state, interstate and state, freight, passenger, and miscellaneous of each, have been fixed. The entire expense is known, including the extra cost of each. To ascertain whether the result is a profit, and if so what per cent., or a loss, is but a problem of primary arithmetic, as is shown by Judge Van Devanter in Arkansas Rate Cases (163 Fed. Rep. 141). There are other methods equally simple, the resultant figures of course being the same. These computations show as to the commodities covered by the freight rate statute of 1907, that two roads, the Hannibal &
St. Louis and the Burlington, allowing nothing for extra cost,
379 there is a deficit, and with all other companies less than two per cent. But with the extra cost added, the deficit for the two companies is much greater, and the other companies show a deficit.

The passenger earnings under the two cent fare law of 1907, allowing nothing for extra cost over interstate business, give no return whatever to the Rock Island, St. Louis & Hannibal, Kansas City, Clinton & Springfield, and the Great Western. The other companies will have the following: The St. Louis & San Francisco between three and four per cent; the Santa Fe between four and five per cent; The Kansas City Southern a small fraction over two per cent; the M. K. & T. between two and three per cent; the Burlington between three and four per cent. But all this is arrived at by allowing no extra cost of service. But to add the extra cost for freight and passenger, there are no earnings over expenses. This is confiscation under the Constitution.

It being a legislative act, and not a judicial one, this Court cannot fix rates. If it could, two and one-half cent passenger rates would be fixed for the stronger roads, and three for the others. But that is for the legislature acting itself with experts, such as the State employed in these cases, or through a Commission with like assistance.

In view of General Equity Rules prohibiting findings of fact, and other matters from being inserted in decrees, this opinion has been extended. And to further show how the court has considered the cases, and the various questions of fact covered by the voluminous

evidence, findings of fact have been made and signed, which will accompany this opinion.

Long and laborious as the work for the Court has been, I am of the opinion that the cases have been expedited by hearing the oral testimony as provided by General Equity Rule 67. It gave the Court a much better insight into the intricacies of the cases, and with a much better knowledge of the cases than could be gained by hearing exceptions to a Master's report. And I am fully
389 compensated by the belief that I have worked out the correct conclusions and with the knowledge that if I am in error, either as to fact or law, that the cases can be speedily heard de novo by the Supreme Court of the United States. Because I feel in all cases, and in these cases more than ever before, as Judge Sanborn said in Bostwick Bank v. Pritzlen, (135 Fed. Rep. 650, 655):

"Every conscientious judge, every thoughtful man, upon whom is laid the grave responsibility and the heavy burden of determining the rights of his fellows, rejoices in the thought, wherever such is the case, that his decision may be reviewed, and that, if erroneous, it will not work irreparable injustice to him whom he deems it his duty to defeat."

The decrees will be for the complainants. Each party will pay the costs by such party made, except the compensation of the Master and stenographer. The half of these will be paid by complainants, and the other half by respondents. The reservation clause usual in such cases will be in the decrees.

Kansas City, Missouri, March 8th, 1909.

391 Afterwards, to wit, on the 17th day of April, 1909, a Supplemental Opinion was filed. Said Opinion is in words and figures as follows:—

In the Circuit Court of the United States, Western District of Missouri, Western Division.

No. 3988. Equity.

St. Louis & San Francisco Railroad Company, Complainant,
vs.
Herbert S. Hadley et al., Respondents.

And Equity Cases Nos. 3989, 3990, 3991, 3992, 3993, 3994, 3995, 3996, 3997, 3998, 3999, 3000, 3001, 3002, 3003, 3004, 3006.

Supplemental Opinion.

Sanborn, McPherson, *Judges*:

These cases are pending on a motion to modify the decrees and opinion filed March 8th, 1909.

1. The costs were taxed, the one-half to the railway companies, and the one-half to the state officers. The company being successful,

it is contended that the taxable costs aggregating about eighteen thousand dollars should all be adjudged against the state officers.

In actions at law, in the absence of a tender or statutory offer to confess judgment, the costs follow the judgment. In equity cases such is the general rule, but not the invariable one. The award as to costs is discretionary.

Two things influenced the court in dividing the costs herein.

First. Defendants are officials, and as officials are representatives. They have no personal interest in the litigation. This of itself is not enough to avoid the costs, but it is to be considered. It will be presumed that the legislature will appropriate a sufficient amount to protect these officers. But this is not always done. The last legislature appropriated $40,000.00 for these cases, which was but two thirds enough for the two years. The Master in Chancery and the lady stenographer gave a great deal of time, followed by very large, but justly owing bills, the one-half of which has been paid by the railways, and by the state nothing with the appropriation ex-
382 hausted. Whether the other half is paid all depends upon what the legislature does.

Second. The more sufficient reason for dividing the costs is because of the extravagantly enormous record made in the cases. The Master gave many weeks to taking evidence, and many more weeks were given by the court in taking evidence. Both the Master and the Court were powerless to abbreviate the record, because the Supreme Court in the case of Blease vs. Garlington, 92 U. S., 1, and the Circuit Court of Appeals for this Circuit in case of Schubert vs. Woodward, 167 Fed. Rep. 47, 52, have held that Trial Courts must receive in equity cases, all evidence offered that is germane to the issues. I complained, and in effect gave warning many times to the parties, but without avail because of the prolixity of the record. Something like 15,000 pages of evidence were taken, when one-third would have been as strong a presentation of either side. Courts should impose penalties for this, and the only penalty is by way of costs. Both sides were at fault, and both sides should bear the burden. It does not follow that such a precedent will be one to plague. It is not a precedent to be followed except in cases where it ought to be followed.

2. Complaint is made because of the recital in my opinion that,

"It being a legislative act, and not a judicial one, this court cannot fix rates. It it could, two and one-half cent passenger rates would be fixed for the stronger roads, and three for the others. But that is for the legislature acting itself with experts, such as the state employed in these cases, or through a commission with like assistance."

My statement that "It being a legislative act, and not a judicial one, this court cannot fix rates," is not controverted by anyone. This being so, as of course, what I said as above is obiter dictum. But because it is dictum, is no reason whatever for not saying it, and still less a reason for now eliminating it from my opinion. The greater part of one of the greatest opinions ever written by the great Chief Justice (Marbury vs. Madison), was dictum. But even if it were

possible, who would dare to mutilate that opinion? But two
383 years since there were published two very large volumes wholly covering dictum only of the United States Supreme Court. Those dicta were and are binding on no one, but they contain much of the cream of our jurisprudence. This dictum of mine is binding on no one. It is my opinion, and will stand as of value, or of no value as the profession and informed laymen fix the value thereon. I believed it proper to say that the strong roads should have two and one-half cents per passenger per mile, and the weaker roads three cents. I could have fairly stated that the St. Louis and Hannibal, and the Kansas City, Clinton & Springfield Railroads should have four cents or more per passenger mile.

I still adhere to those views, and entertaining them, I know of no reason for not stating them, with reasons for believing it was my duty to state them. Passengers, like consumers, have rights. One of those rights is to have fares fixed reasonably low. But the term reasonable is a comparative one. It must be in proportion to what it is worth, and the better the service, the more it is worth. And the public is entitled to have, with the right to demand, efficient service, provided always such is paid for. Much in argument was said by counsel on both sides as if an arbitrary flat rate is all that is involved, regardless of service and regardless of all other things. Whether the trains are expensive or inexpensive, daylight or night trains, through or local trains, main line or branch trains, roads through the hills of central Missouri, or the Ozarks, or over the prairies, and whether the trains carry few or many passengers, are matters largely passed over as if of no importance. To me they seem of great importance. So it is as to the greatly increased cost of materials compared with ten years ago. The average fare paid per year, aside from the low excursion rates, is less than six dollars per year, commercial travelers excepted. To reduce that to four dollars, thereby saving two dollars, is of course of importance. So are other matters of importance. Aside from having efficient service to be paid for at remunerative rates, the laboring men, the employés, have rights. They have the right to be well paid for their work, in day time and night time, sunshine and storm,
during the excessive heat of the summer and the rigors of
384 winter. Their hazardous and most dangerous service entitles them to remunerative compensation, which they cannot have with meagre earnings of the roads. Evidences of humanity and kindly feeling for their fellow men need not be wholly displayed toward the man who pay- six dollars per year for passenger fares. A kindlier disposition would suggest an equitable division of sympathy. Thousands and thousands of them have already been "let out" because of decreased earnings, and more are to follow, with diminished compensation for those from necessity retained. What is the truthful answer to make these men, and who is to make this answer? It is doubtful if the legislature thought this out. I decline to modify my opinion as respects this.

3. It is contended that the court was in error in its original opinion in that the penalties of the statutes render them void.

Whether rates prescribed by statutes are valid or invalid, is a judicial question, and the legislature cannot prohibit the courts from

passing thereon. This was so stated in the Minnesota Milk case, 134 U. S. And this cannot be done indirectly, by imposing such penalties as to terrorize the company, its officers and agents so that they do not dare to litigate the question. This was so held in ex parte Young but a year ago.

This question received but little attention from any of the counsel or the court, and was but briefly discussed by the court in the opinion.

In the Consolidated Gas case in 146 Fed. Rep., 150, Circuit Judge Lacombe held that a penalty of $1.000.00 for each charge for gas in excess of the statutory or commission rate was prohibitive and a denial of the right to go into the courts. And on the final hearing of the same case in 157 Fed. Rep., 849, 881, a like holding is made. And in the same case on appeal, the Supreme Court held a year ago that the penalties were so excessive as to be void.

The discussion by Justice Brewer speaking for the court, in the case of Cotting vs. Kansas City Stock Yards, 183 U. S. 79, 99, is to the same effect, although the question was not decided. And a like discussion, with a like putting the question aside without a decision, is found in the Reagon case in 154 U. S.

385 And in the ex parte Young case, although the penalties were more severe than under the Missouri statutes, the question is at rest. The sole question is—Can a party be allowed to litigate a disputed question of fact as to property rights, without confiscation of all its property, and all of its agents being sent to jail, if the case is lost? Surely he can. Upon reflection and with much additional consideration, the holding now is that the section imposing penalties is void.

But this is largely an academic question, for the reason that the penalty section is easily separated from the main features of the statute. And I need not discuss the proposition that when separable, the void section does not render the entire statute void.

4. These cases as to freight were brought four years ago. Two years ago supplemental bills were filed, bringing forward the new freight rate statutes, and the passenger rate statute. Upon a hearing, by agreement of counsel on both sides, a temporary injunction was issued against the enforcement of the freight rate statute. The railways asked for a temporary injunction against the enforcement of the passenger rate statute. The Attorney General and his associates contested this, and were successful to the extent that the court ordered an observance of the statute for some months, until information from actual tests could be made. So that from the very inception of the case, it has been contended on the one side that the statute is invalid, and on the other side that the statute is valid. It therefore follows that this court has had jurisdiction for four years over all the parties, and over the entire subject matter of state earnings.

It is clear that this court having such jurisdiction should retain it over all the parties, and the subject matter, to the end that the decrees hereafter may be enlarged, or modified, as varying circum-

stances and the acts of the parties may require. Therefore the decrees should be so changed as to recite such reservations.

Kansas City, Missouri, April 17th, 1909.

386 UNITED STATES OF AMERICA, *act:*

I, Adelaide Utter, Clerk of the Circuit Court of the United States for the Western Division of the Western District of Missouri, do hereby certify that the above and foregoing is a full, true and complete copy of the record, assignments of errors and all proceedings in the cause wherein The Wabash Railroad Company is complainant and John A. Knott, et al., are defendants, on the appeal of the defendants and the cross-appeal of the complainant, as required by the stipulation of parties on file in said cause, set out on pages 323 and 324 supra.

Witness my hand as clerk and the seal of said Court. Done at office in Kansas City, Missouri, this first day of May, A. D. 1911.

[Seal of the United States Circuit Court for the Western District of Missouri, Western Division.]

ADELAIDE UTTER, *Clerk.*

Endorsed on cover: File No. 22,770. W. Missouri C. C. U. S. Term No. 694. John A. Knott, H. R. Oglesby, and Frank A. Wightman, Railroad and Warehouse Commissioners, and Elliott W. Major, Attorney General of the State of Missouri, appellants, vs. The Wabash Railroad Company. File No. 22,771. Term No. 695. The Wabash Railroad Company, appellant, vs. John A. Knott, H. R. Oglesby, and Frank A. Wightman, Railroad and Warehouse Commissioners, and Elliott W. Major, Attorney General of the State of Missouri. Filed June 26, 1911. File Nos. 22,770 & 22,771.

(22,772 and 22,773.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

No. 696.

JOHN A. KNOTT, H. R. OGLESBY, AND FRANK A. WIGHTMAN, RAILROAD AND WAREHOUSE COMMISSIONERS, AND ELLIOTT W. MAJOR, ATTORNEY GENERAL OF THE STATE OF MISSOURI, APPELLANTS,

vs.

THE ST. JOSEPH & GRAND ISLAND RAILWAY COMPANY.

No. 697.

THE ST. JOSEPH & GRAND ISLAND RAILWAY COMPANY, APPELLANT,

vs.

JOHN A. KNOTT, H. R. OGLESBY, AND FRANK A. WIGHTMAN, RAILROAD AND WAREHOUSE COMMISSIONERS, AND ELLIOTT W. MAJOR, ATTORNEY GENERAL OF THE STATE OF MISSOURI.

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI.

INDEX.

	Original.	Print
Citation to railway company	*a*	1
Citation to Knott *et al*	*c*	1
Bill of complaint	1	2
Restraining order	23	15

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., SEPTEMBER 19, 1911.

	Original.	Print
Order continuing restraining order	25	16
Appearances	28	19
Order of temporary injunction	29	19
Injunction bond	30	20
Demurrer of Knott, Rice, and Wightman, railroad commissioners	31	21
Demurrer of Herbert S. Hadley, attorney general	34	22
Waiver of affidavits to demurrers	37	24
Order overruling demurrers	38	24
Joint answer of Knott, Rice, and Wightman, railroad commissioners	39	24
Answer of Herbert S. Hadley, attorney general	56	34
Replication to answer of Knott *et al*	73	44
Replication to answer of Herbert S. Hadley, attorney general	74	44
Decree *pro confesso*	75	45
Motion of defendants for reference to master	76	46
Motion of complainants for oral hearing	77	47
Order of reference	80	50
Motion for leave to file amended and supplemental bill	82	51
Restraining order of June 13, 1907	83	52
Restraining order of June 14, 1907	84	52
Notice of motion to amend	86	53
Order granting leave to file amended and supplemental bill	87	54
Amended and supplemental bill	89	56
Order granting leave to file amendment to bill	103	67
Amendment to bill of complaint	104	68
Acknowledgments of service of subpœna	113	74
Joint demurrer of Knott, Wightman, and Oglesby, railroad commissioners	117	76
Demurrer of Herbert S. Hadley, attorney general	122	80
Joint and several demurrer of Joseph M. Patterson *et al*	127	83
Joint and several demurrer of Wyeth Hardware & Mfg. Co. *et al*	129	84
Joint and several demurrer of Albert J. Brunswig *et al*	131	86
Interlocutory report of master and order thereon	133	87
Order granting leave to amend amendment to bill of complaint	135	88
Order overruling demurrers	136	89
Joint answer of John A. Knott *et al*	137	89
Answer of Herbert S. Hadley, attorney general	139	90
Replication to answer of Knott *et al*	147	98
Replication to answer of H. S. Hadley, attorney general	148	99
Order as to hearing	149	100
Affidavit of T. F. Wharton	150	101
Exhibits A to J—Statements	152	103
Notice as to hearing	162	109
Return of special master	163	110
Orders as to hearing	164	110
Complainants' requests for findings of fact	177	123
Certificate of trial judge	227	158
Stipulation and order to abide decision in No. 3003	232	163
Order of submission	234	164
Order substituting Elliott W. Major as attorney general in the stead of Herbert S. Hadley	235	165
Order as to statement of expert accountants	237	167
Order as to answers, &c	238	168
Findings of fact	239	168

	Original	Print
Decree	264	191
Motion to modify decree	269	194
Amended motion to modify decree	271	195
Notice of motions to modify	273	196
Amended decree	274	197
Declinations to join in appeal	279	200
Defendants' assignment of errors	288	206
Defendants' petition for appeal	297	214
Defendants' bond on appeal	298	214
Order granting appeal	301	216
Complainant's assignment of errors	302	217
Complainant's petition for cross-appeal	306	219
Bond on cross-appeal	307	220
Order granting cross-appeal	309	221
Order extending time to file transcript	310	222
Stipulation as to transcript	311	222
Remarks of McPherson, judge, filed June 14, 1907	313	224
Remarks of McPherson, judge, filed June 17, 1907	316	225
Remarks of McPherson, judge, filed June 17, 1907	324	231
Opinion of McPherson, judge, filed March 31, 1908	330	235
Opinion of McPherson, judge, filed March 8, 1909	339	240
Supplemental opinion of McPherson, judge, filed April 17, 1909	369	260
Certificate of clerk	374	263

a *Citation.*

THE UNITED STATES OF AMERICA, *ss:*

The President of the United States to The St. Joseph and Grand Island Railway Company, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States at the City of Washington, within thirty days from the date of this writ, pursuant to an appeal duly allowed by the Circuit Court of the United States for the Western Division of the Western District of Missouri, and filed in the clerk's office of said court on the 6th day of March, A. D. 1911, in a cause wherein John A. Knott, H. R. Oglesby and Frank A. Wightman, Railroad and Warehouse Commissioners, and Elliott W. Major, Attorney General of the State of Missouri, are appellants, and you are appellee, to show cause, if any, why the amended final decree rendered against the said appellants, as in the said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Smith McPherson, Judge of the Circuit Court of the United States for the Western Division of the Western District of Missouri, this 6th day of March, A. D. 1911.

SMITH McPHERSON, *Judge.*

THE UNITED STATES OF AMERICA,
Western District of Missouri, ss:

I hereby acknowledge due service of the above citation this 6th day of March, A. D. 1911.

FRANK HAGERMAN,
Solicitor for St. Joseph and Grand Island Railway Company, Appellee.

b [Endorsed:] 3001. St. Joseph & Grand Island Railway Co. vs. John A. Knott et al. Citation. Filed March 6, 1911. Adelaide Utter, Clerk.

c In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 3001.

ST. JOSEPH & GRAND ISLAND RAILWAY COMPANY, Complainant,
vs.
JOHN A. KNOTT, H. R. OGLESBY, and FRANK A. WIGHTMAN, Railroad Commissioners, et al., Defendants.

The President of the United States to all the defendants of record in above entitled case:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States at the city of Washington,

District of Columbia, within thirty days from the date of this writ, pursuant to an appeal duly allowed by the circuit court of the United States for the western division of the western district of Missouri, on March 6, 1911, as a cross appeal in a case where the St. Joseph & Grand Island Railway Company is cross appellant and you are the cross appellees, and show cause, if any, why the amended final decree rendered against the said appellant as in the said appeal mentioned should not be granted, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Smith McPherson, Judge of the Circuit Court of the United States for the Western Division of the Western District of Missouri, this March 6, 1911.

SMITH McPHERSON, *Judge.*

Due service of above citation accepted this March 6, 1911.

ELLIOTT W. MAJOR,
Att'y General;
JOHN M. ATKINSON,
Ass't Att'y General,
SANFORD B. LADD,
Solicitors for Appellees and Defendants in said Cause.

[Endorsed:] No. 3001. St. J. & G. I. Ry. Co. v. Jno. A. Knott et al. Citation. Filed March 6, 1911. Adelaide Utue, Clerk.

UNITED STATES OF AMERICA, ss:

Be it remembered that heretofore, to-wit, on the 16th day of June, 1905, a Bill of Complaint was filed in the office of the Clerk of the Circuit Court of the United States for the Western Division of the Western District of Missouri in the cause wherein The St. Joseph & Grand Island Railway Company is complainant and John A. Knott et al. are defendants.

Said Bill of Complaint is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

THE ST. JOSEPH & GRAND ISLAND RAILWAY CO., Complainant,

vs.

JOHN A. KNOTT, JOSEPH P. RICE, and FRANK A. WIGHTMAN, Railroad Commissioners of the State of Missouri; Herbert S. Hadley, Attorney General of the State of Missouri, and Wyeth Hardware & Manufacturing Company, a Corporation, and Jones-Payne Hat Company, a Corporation, Defendants.

Bill of Complaint.

To the Honorable the Judges of the Circuit Court aforesaid:

Your orator, The St. Joseph and Grand Island Railway Company, brings this its bill of complaint against each of the above named defendants, and thereupon avers:

2 I.

Your orator, The St. Joseph and Grand Island Railway Company, is a railway corporation organized and existing under the laws of the State of Kansas with its chief office therein and a citizen and resident thereof, being authorized to do business in the State of Missouri. It is, with its railroad, engaged in state and interstate commerce, owning and operating lines of railway in Mis-
3 souri and other states. Of the said lines, the following are, and have for a long time been operated by your orator in the State of Missouri:

Sixty-one and fifteen hundredths miles of track between St. Joseph and Kansas City, the same being in Buchanan, Clinton, Clay and Jackson counties.

II.

This cause arises under the Constitution and laws of the United States, for that it seeks to enjoin the enforcement and adoption as against your orator of the provisions, requirements and prohibitions in the act of the legislature of Missouri mentioned in paragraph VII. hereof (hereinafter called the Act of 1905); said act being unconstitutional, violative of the provisions of the Constitution of the United States and the amendments thereto, and contrary to the laws of the United States, all as hereinafter more particularly stated. The matter and amount in dispute exceed, exclusive of interest and costs, the sum or value of two thousand dollars.

III.

The defendants, John A. Knott, Joseph P. Rice and Frank H. Wightman, constitute the duly elected and qualified board of railroad commissioners of the State of Missouri, and are citizens and residents respectively of Marion County, City of St. Louis,
4 and Barry County therein, their statutory official residence being in Cole County therein. The defendant Herbert S. Hadley is Attorney General of the State of Missouri, and is a citizen and resident of Cole County therein. Each of said parties is, by the law of which the act of 1905 is a part, required to do and perform the special duties hereinafter mentioned.

IV.

Defendants Wyeth Hardware & Manufacturing Co. and Jones-Payne Hat Company, each of whom is a citizen and resident respectively of the county of Buchanan and State of Missouri, are herein designated as shippers, each being a corporation engaged in shipping over your orator's road and other roads in the state, to and from points therein, the commodities, the rates of which are attempted to be limited by the said Act of 1905. These defendants represent a class of shippers so numerous that it is impracticable to attempt to join them all, and the above named defendants are

made parties hereto for the purpose of determining the rights as against your orators of all shippers under the said Act of 1905.

V.

Article 4 of Chapter 12 of the Revised Statutes of Missouri,
5 1899, of which the Act of 1905 has become a part, made provision for the classification of railroads and freights and provision for maximum rates. Sections 1191, 1192, and 1193 thereof provide as follows:

SEC. 1191. Roads Classified.—All railroads in the State of Missouri are hereby divided into three classes, to be known as Class A, Class B, and Class C. Class A shall include all through or trunk line railroads. Class B shall include all of the branch roads owned, leased or occupied by such through or trunk line railroad companies or corporations. Class C shall include all other railroads or parts of railroads owned, leased or occupied, or which may hereafter be owned, leased or occupied in this state, either wholly or in part.

SEC. 1192. Passenger Charges Regulated.—Any individual, company or corporation, owning, operating, managing or leasing any railroad or part of a railroad in this state, in the several classifications as herein prescribed, shall be limited to a compensation per mile for the transportation of any person with ordinary baggage not exceeding one hundred pounds in weight, as follows: In Class A, not exceeding three cents per mile, and in classes B and C, not exceeding four cents per mile: Provided, that no such individual, company or corporation shall charge, demand or receive any greater compensation per mile for the transportation of children of the age of twelve years or under, than one-half of the rate above prescribed; and provided further, that the rates for transportation herein prescribed may be reduced, as hereinafter provided.

SEC. 1193. Freight Classified.—All freights hereafter transported upon any railroad or part of a railroad in this state are hereby divided into four general classes, to be designated as first, second, third and fourth classes, and into seven special classes, to be designated as class D, E, F, G, H, I and J. Class D shall comprise all grain in car-loads. Class E shall comprise flour in lots of fifty barrels or more, and lime in lots of twenty-four barrels or more. Class F shall comprise salt in lots of sixty barrels or more, and cement, water-lime and stucco in lots of twenty-four barrels or more.

Class G shall comprise lumber, lath and shingles, in car-
6 loads. Class H shall comprise live stock in car-loads. Class I shall comprise agricultural implements, furniture and wagons. Class J shall comprise coal, brick, sand, stone, railroad ties and cord-wood, and all heavy fourth class articles in car-loads; and in addition to the several articles in the said special classes, shall be added other articles as and in the manner hereinafter prescribed, except in classes D, E, G and H; and all articles not before enumerated or subsequently set into said classes as hereinafter provided,

shall be placed in and belong to the four general classes to be classified by the railroad commissioners hereinafter to be provided.

Section 1194 fixed the maximum rates for the seven special classes of freight designated as classes D, E, F, G, H, I and J, respectively. The statutes of the state also provided for the election and qualification of the railroad commissioners aforesaid, and prescribed their special duties, among which special duties in relation to the adoption and enforcement of the said Act of 1905 are these: To require to be posted by each railroad company in the state in its depot or railroad station and to be filed in the office of the railroad commissioners, a schedule of rates to be charged, which in no event must exceed the maximum rates at any time fixed by law, nor those maximum rates fixed by the Act of 1905, which rates so shown by the schedules so filed with the railroad commissioners cannot be advanced except after ten days' public notice plainly stating the changes proposed to be made in the schedule, and the time when said changes will go into effect; to require to be likewise filed and published, all joint tariff arrangements with other common carriers; to see that all such schedules of rates are observed by all common carriers; if and when the common carrier shall neglect or refuse for thirty days to file or publish its schedule as aforesaid, as commissioners to make out and print such schedule for such carrier, delivering to it a copy
7 thereof which shall be likewise posted in the depots and stations; to enforce statutory provisions imposing severe penalties for a failure to publish and file said schedule; to hear all complaints made by any person for a violation of any of said provisions of law as well as to institute on its own motion any such complaint. The statute of the state also especially provides for the adoption and enforcement of the provisions of the Act of 1905 by requiring the prosecuting attorney of each county to prosecute any carrier violating the provisions of the law aforesaid whenever directed by the railroad commissioners, receiving for his services compensation equal to the amount allowed by law on forfeited recognizances, and the attorney general is required to assist in such prosecution and to prosecute other cases whenever directed by the railroad commissioners.

VI.

The legislature of the State of Missouri in 1903 passed an act, herein called the Act of 1903, reading as follows:

SECTION 1. That chapter 12 of article 4 of the Revised Statutes of Missouri of 1899, be, and the same is hereby amended by adding thereto two new sections, to be between sections 1194 and 1195 of said chapter, to be known as sections 1194*a* and 1194*b*, providing for the fixing, modifying and enforcing freight rates, as follows:

SECTION 1194*a*. The board of railroad and warehouse commissioners are hereby authorized, empowered and required to fix, maintain and establish just and reasonable freight rates on all classes of freight, from, to and between all points and stations upon
8 and along all lines of railroad in this state; and that said board is authorized and empowered to reduce, change or modify any

and all such freight rates so fixed and established as hereinafter provided. And said board may, of its own motion, and shall, upon the sworn complaint of any shipper, mayor, councilman, alderman or trustee of any city, town or village, first giving five days' written notice to the railroad company affected or complained against, proceed to fix, establish, modify or reduce the freight rates or charges of any such road from, to or between any and all points or stations in Missouri; and any and all orders fixing, establishing, modifying or reducing any such freight rates or charges shall be the judgment of said board and constitute the legal rates or charges that such railroad company may collect for the transportation of freight from, to and between its stations in Missouri; and said board shall immediately upon the fixing, establishing, modifying or reducing the freight rates or charges of any railroad company, notify such railroad in writing thereof; and said railroad shall comply with the orders and judgments of said board with reference to such freight rates or charges within ten days after such notice. And if any railroad fails, refuses or neglects to put the rates so ordered by said board into effect and operation within ten days after notice, the board shall submit a certified copy of its orders to the attorney general of the state, with notice that such railroad (designating the same) has failed to comply therewith. And the attorney general, upon receipt thereof, shall immediately institute suit in the name of said board of railroad and warehouse commissioners against such railroad in the Supreme Court of the state, by mandamus or other proper remedy to enforce said order of said board.

Section 1194*b*. All railroad companies doing business in this state shall, upon the request of the board of railroad and warehouse commissioners furnish to said board copies of all its schedules of freight rates and charges, and all other papers and documents, including bills of lading and contracts for the transportation of freight affecting in any way the transportation of freight within, into and from this state. And said board shall have power and authority to examine all officers, agents and employès of said railroad companies, and all other persons, under oath or otherwise, to procure the necessary information to make just and reasonable freight rates
9 or charges, and to ascertain if the freight rates so fixed by said board are being observed or violated. And said board shall have power to administer oaths, to issue subpœnas for persons and papers, examine witnesses and to enforce the same in like manner as the circuit courts of this state. And in the issuance and enforcement of the papers and process above, the jurisdiction shall be co-extensive with the state.

There was then and there adopted sections 1194*a* and 1194*b* to become part of article 4 of chapter 12 of the Revised Statutes of Missouri, 1899, to be known as sections 1194*a* and 1194*b* and to be inserted between sections 1194 and 1195 of the said Revised Statutes.

VII.

The legislature of the State of Missouri at its session of 1905, passed the act herein called the Act of 1905, reading as follows:

Section 1. That section 1194 of the Revised Statutes of Missouri, 1899, concerning the regulation of freight charges, being part of article IV, of chapter 12, entitled "Corporations, private," be and the same is hereby repealed and the following, to be known as sections 1194, 1194*a*, 1194*b*, of said Revised Statutes, be enacted in lieu thereof, so that said sections shall be collocated between the existing sections 1193 and 1195 of said Revised Statutes of 1899.

Section 1194. No individual, company or corporation owning, operating, managing or leasing any railroad or part of railroad, designated in section 1191 as in classes A, B, or C, shall demand, charge or receive a greater or higher rate for carrying from initial to terminal points in this state articles named in the several classes herein designated, than is hereinafter provided for, namely: Class D, in car loads of forty thousand pounds minimum weight, not exceeding five cents per one hundred pounds for the first twenty-five miles and not exceeding one-half cent per hundred pounds for the second twenty-five miles, or fractional part thereof, and not exceeding one-half cent per hundred pounds for each additional twenty-five miles or fractional part thereof. Class E, in car loads of twenty-four thousand pounds minimum weight not exceeding five cents per one hundred pounds for the first twenty-five miles and not exceeding one-half cent per hundred pounds for the second twenty-five miles or fractional part thereof, and not exceeding one-half cent per hundred pounds for each additional twenty-five miles or fractional part thereof. Class F, in car loads of thirty thousand pounds minimum weight, not exceeding five cents per one hundred pounds for the first twenty-five miles and not exceeding one-half cent per hundred pounds for the second twenty-five miles, or fractional part thereof, and not exceeding one-half cent per hundred pounds for each additional twenty-five miles or fractional part thereof. Class G, in car loads of thirty thousand pounds minimum weight, not exceeding five cents per one hundred pounds for the first twenty-five miles and not exceeding one-half cent per hundred pounds for the second twenty-five miles, or fractional part thereof, and not exceeding one-half cent per hundred pounds for each additional twenty-five miles, or fractional part thereof. Class H, in car loads in common cars measuring inside from twenty-nine feet to and including thirty feet and six inches in length (to be known as standard cars), not exceeding $6.00 per car load for the first twenty-five miles and not exceeding $3.00 per car load for the second twenty-five miles, or fractional part thereof, and not exceeding $2.00 per car load for each additional twenty-five miles, or fractional part thereof, over twelve miles. For the carriage of any of the articles comprising Class H in cars of other lengths for the distances above specified, the following percentages of the foregoing rates per car load shall not be exceeded, namely: In cars of length less than twenty-nine feet, ninety-four per cent; in cars of length over thirty and one-half feet to and including thirty-two feet, one hundred and four per cent; in cars of length over thirty-two feet to and including thirty-three feet and nine inches, one hundred and seven per cent; in cars of length over thirty-three feet and

nine inches to and including thirty-six feet, one hundred and ten per cent; in cars of length over thirty-six feet to and including thirty-eight feet, one hundred and thirteen per cent; in cars of length over thirty-eight feet to and including forty feet, one hundred and sixteen per cent; in cars of length over forty feet to and including forty-two feet, one hundred and twenty-five per cent; in cars of length over forty-two feet to and including forty-four feet, one hundred and thirty-five per cent; in cars of length over forty-four feet, one hundred and forty per cent of the rates herein specified for cars of the standard length of twenty-nine feet to and including thirty feet and six inches, shall not be exceeded. All the foregoing lengths to be taken by inside measurements. Class I, in car loads of twenty thousand pounds minimum weight, not exceeding $14.00 per car load for the first twenty-five miles and not exceeding $2.00 per car load for the second twenty-five miles, or fractional part thereof, and not exceeding $2.00 per car load for each additional twenty-five miles or fractional part thereof. (Class.) In computing the rate of freight according to the provisions of this article, the distance shall be computed from the point where it is received to the point of destination in the state, notwithstanding it may pass from one road to another.

Section 1194*a*. That for the violation of the foregoing sections the railroad company so offending shall forfeit and pay to any person thereby affected the freight rate charged, demanded, or received in excess of the rates prescribed in said section, together with all actual damages caused thereby, to be recovered in any court having jurisdiction thereof by the existing law. And (if) the plaintiff in such action recover judgment therein the court shall treble the same and the plaintiff shall on motion be allowed a reasonable attorney's fee for bringing the action.

Section 1194*b*. All acts and parts of acts, and all rules and regulations, freight schedules, classifications and groupings by rail-
12 road companies or the railroad and warehouse commissioners of this state in conflict with the provisions of this act are hereby repealed and declared void.

Said act will under the Constitution of the State of Missouri take effect on the 16th day of June, 1905, which will be ninety days after the adjournment of the session of the legislature at which the act was passed. The rates now being lawfully charged by your orator for the transportation of freight of the character mentioned in the said act, are shown in schedules now on file with the railroad commissioners and posted in your orator's depots and railroad stations, and are far in excess of the maximum rates fixed in said act of 1905, so that when said act becomes effective, if permitted to be enforced, it will require such a reduction in your orator's said rates as to make imperative a change in the said schedule, which change your orator does not propose to make, and cannot make without jeopardizing its property interests. The railroad commissioners propose and threaten to, and will, unless enjoined herein, enforce the special provisions of the statute of the state for the enforcemnt of said act of 1905 by entering upon investigations both upon its own instigation

and upon the complaint of shippers, and by determining and adjudging your orator's present schedule of rates posted and filed as aforesaid to be unreasonable, unjust and extortionate, for the sole reason that said rates are higher than those prescribed by said act of 1905, and by requiring under the pain of large penalties, threatened to be enforced, your orator to file and publish a new schedule fixing rates not in excess of those mentioned in said act of 1905. Besides which, said railroad commissioners propose, as specially required by law, to file, post and publish as your orator's said schedule the maximum rates fixed in said act, if and when your orator refuses so to do, and and they propose to direct each of the prosecuting attorneys in each of the counties through which the line of your orator runs, to
13 prosecute and recover of your orator the large and excessive penalties provided by law, and to direct the defendant, the attorney general, to assist in such prosecutions, and to direct the defendant attorney general to prosecute your orator and recover the penalties provided by law for its failure to comply with the orders which the railroad commissioners propose from time to time to make in investigations instituted for the enforcement of said act of *of* 1905, by compelling your orator to adopt a rate in accordance therewith. Said prosecuting attorneys and attorney general will, unless restrained herein, conduct said prosecutions and seek to recover said penalties.

The shippers along the line of your orator's railroad are very numerous and are daily engaged in making and receiving shipments to and from points in Missouri of freight of the special classes designated in the act of 1905, so that unless restrained by this Court there will be instituted by them a multiplicity of suits to recover of your orator treble damages sustained, together with attorneys' fees in each case. Said parties being so numerous, and the causes of action which will accrue, so many, if the act of 1905 be enforced, that it is not practicable to make more than part of said shippers defendants hereto, but all other shippers in the counties in the state where your orator's lines of road extend, are likewise interested with those named as defendants herein, so that such as are named as such defendants should defend for all those having like interest, any such omitted party being permitted to become a defendant herein if so desired, to the end that all persons having a like interest will be bound by the decree to be entered herein, and the court have an opportunity to determine once for all the validity of said act of 1905.

14 VIII.

Said Act of 1905 is invalid and inoperative, and of no force or effect, for each of the following reasons:

(*a*) It fixes rates confiscatory in their nature, unreasonable in amount, insufficient to permit your orator to operate its property in Missouri without loss, making it impossible for freight to be carried by your orator between points in Missouri at any profit, all of which is contrary to and violative of the provisions of the constitution of the United States, and particularly of the fourteenth amendment thereto,

prohibiting the taking of property without due process of law, and guaranteeing to all persons equal protection of the laws.

(*b*) It is invalid as alleged in paragraphs XII and XIII hereof, whereby it is violative of said amendment to the constitution of the United States.

(*c*) It provides that in computing the rate of freight, the distance shall be computed from the point where it is received to the point of destination in the state, notwithstanding it may pass from one road to another. This impairs your orator's freedom of contract, fixes a rate for it based upon carriage over the line of another road, whereby the provisions of the federal constitution and the amendments thereto hereinbefore referred to, are violated, and the freedom of contract guaranteed by section 4, article 2 of the state constitution, denied.

(*d*) It provides in section 1194 that no individual, company or corporation owning, operating, managing or leasing any railroad or part of railroad designated in section 1191 as in classes A, B or C, shall demand, charge or receive a greater or higher rate for carrying from initial to terminal points in this state, articles named in the several classes therein designated than as therein provided for, but it also provides in section 1194*a* that the penalty for a violation of the act shall be enforced only against railroad companies, thereby exempting individuals from such penalties. This is a discrimination between individuals and companies, and denies to your orator the equal protection of the laws guaranteed it by the fourteenth amendment to the constitution of the United States.

15 (*e*) It attempts to adopt and create as part of Article 4 of chapter 12 of the Revised Statutes of Missouri, 1899, two sections called sections 1194*a* and 1194*b*, when the Act of 1903 adopted sections so numbered as part of the same article and chapter. There was by the Act of 1905, no repeal or attempted repeal of said Act of 1903. The Act of 1905 cannot be treated as amendatory to the Act of 1903 because it is insufficient, since it does not in any wise comply with the provisions of section 34, article 1, of the constitution of the State of Missouri providing, "No act shall be amended by providing that designated words thereof be stricken out, or that designated words be inserted, or that designated words be stricken out and others inserted in lieu thereof; but the words to be stricken out, or the words to be inserted, or the words to be stricken out and those inserted in lieu thereof, together with the act or section amended, shall be set forth in full as amended." The act is, therefore, invalid because the law as it now stands is uncertain, there being two separate enactments upon two different subjects designated as sections 1194*a* and 1194*b* of article 4 of chapter 12 of the Revised Statutes of 1899.

IX.

Your orator has in its entire system three hundred and twelve and twenty-one-hundredths miles of railroad, leased, owned and operated, and in acquiring and constructing said system, it has expended large sums of money for right of way, ties, iron, grading, bridging, equipment, and for all the facilities and appliances necessary for the operation of a railway, and it has, at great cost, acquired terminals

and terminal facilities at various cities and towns to and through which its system extends. All of said railway, including that
16 portion in Missouri, was constructed and fairly acquired at a fair and reasonable cost; it was judiciously located, and has at all times been properly and economically operated. Its capitalization in bonds and stocks is fair and reasonable and less than the amount for which said road could be reproduced. Its fixed charges are no more than would be required to produce and acquire the property, its equipment, facilities and terminals. All the lines in Missouri secure and receive a due, fair and reasonable proportional benefit of the entire system, and the value of property in Missouri as well as its capacity for serving the public, is proportionately increased and augmented thereby. Upon the value of the property of your orator it has only been able in the past to have any kind of returns, because it was operated as part of a whole system. The said rates fixed in said Act of 1905 are unjust, unfair and unreasonable. The charges now made by your orator for the transportation of passengers and freight in the other states through which its lines extend, and upon its interstate traffic are just and reasonable, and if a corresponding reduction, or even a much smaller reduction should be made in said rates on its local business in other states, and upon its interstate traffic, its earnings would be reduced below a sum sufficient to pay its operating expenses and taxes and to maintain its said lines of railroad, and defray its fixed charges, and no reward or profit whatever would be left to your orator as compensation for its services as a common carrier upon its system of railroads.

X.

The rates now charged by your orator for state shipments of the classes of freight mentioned in the Act of 1905 are in ex-
17 cess of the maximum therein fixed. If, for the classes of freight mentioned in the Act of 1905, charges should be by your orator made at the maximum rates therein fixed for state shipments, your orator would be required to do such business not only without profit, but at a loss, and without any return upon its investment in this state. Such rates in said Act of 1905 mentioned are unjust, unreasonably low, confiscatory in their nature and will not make any return upon the investment in the property of your orator in this state. Taking the gross receipts of all the state business of whatsoever kind which your orator does, can or will do in Missouri when charging the maximum rates fixed by the Act of 1905 for the classes of freight therein mentioned, and deducting from the total receipts the cost of doing such business in the state, there will not be sufficient to pay operating expenses, and there will not be left any sum as profit or as a return upon the value of the property of your orator devoted to the use of such business in the state.

The maximum rates for each class of freight mentioned in the Act of 1905 are not sufficient to pay the cost of carriage thereof.

XI.

The total earnings of your orator from local and state business in Missouri for the last three years were as follows: For the fiscal year ending in 1902, $73,903.83; 1903, $70,655.51; 1904, $81,213.14.

The expenses of doing such local and state business for said three years was in excess of these figures, such excess being as follows: For the fiscal year ending in 1902, three thousand five hundred and thirty-seven dollars and ninety cents; 1903, seventeen
18 thousand three hundred and thirty-three dollars and eighty-seven cents; 1904, fifteen thousand three hundred and eighty-six dollars and eleven cents.

The reduction in rates under said Act of 1905 will not increase the local traffic, and the volume of state and local business will not be more in 1905 than it was in 1904, while the expense of doing such business will be as great, and if in the future said business increases there will be a proportional increase in said expenses. The value of the part of your orator's property in Missouri used in doing such state and local business is not less than one million dollars.

If, for the class of freight mentioned in the Act of 1905, your orator should charge the maximum rates therein fixed, its total gross receipts from local or state traffic in Missouri will be so reduced as not to exceed sixty-five thousand three hundred dollars per annum, and the expenses aforesaid will not be lessened, which makes the attempted reduction in both gross and net receipts unfair and unjust and fails to give a fair return upon the investment in your orator's said property, and the enforcement of said act will compel your orator to do its local and state business in such a way as not to permit it to make a fair and reasonable profit thereon.

XII.

There are in this state carrying therein the classes of freight mentioned in said act, and hence affected thereby, the following companies owning lines of railroad:

The Chicago and Alton Railway Company, the Wabash Railroad Company, the St. Louis and San Francisco Railroad Com- *the Missouri Pacific Railway Company, the St. Louis, Iron Mountain and Southern Railway Company, the Kansas City South-*
19 *ern* pany, the Missouri Pacific Railway Company, the St. Louis, Iron Mountain and Southern Railway Company, the Kansas City Southern Railway Company, the Chicago, Rock Island and Pacific Railway Company, the Chicago, Burlington and Quincy Railroad Company, The Saint Joseph and Grand Island Railway Company, the Chicago Great Western Railway Company, the Chicago, Milwaukee and Saint Paul Railway Company, the Atchison, Topeka and Santa Fe Railway Company, the Saint Louis and Hannibal Railway Company, the Missouri, Kansas and Texas Railway Company.

Each and all of said companies claim that the maximum rates fixed by said Act of 1905 are confiscatory in their nature, and if charged, would result in said company doing its state business without any profit, which as a fact is true. Each of said companies has filed or

will at once file a bill similar to that now presented by your orator. Even if in this cause it should be held that such maximum rates should be valid as against your orator, yet as a matter of fact, the same are unreasonably low as against each of said other *and will not permit either of said companies to make a profit upon its state business, and therefore said act is invalid as against said* companies and will not permit either of said companies to make a profit upon its state business, and therefore said act is invalid as against said companies. This being true, the act, even if held valid as to your orator, is unconstitutional because it would thereby become discriminatory in that it would not apply alike to all persons or corporations operating railroads in this state, whereby the provisions of the constitution of the United States, and the amendments thereto hereinbefore mentioned are violated.

20 XIII.

Said Act of 1905 fixes and establishes maximum rates which are unjust, unreasonable and unconstitutional in this: the cost of transporting livestock is greater than that of any of the other commodities in which a reduction is made, yet said act reduces the rate thereon on an average of twenty-one per cent, while on salt and cement there is only a slight reduction. The different articles transported on your orator's railway have been arranged in classes according to cost of carriage, price, risk of injury, bulk, volume of traffic, and other circumstances well understood, and have remained in substantially the same classes for many years, which has been recognized, approved and enacted into law by the statutory classification in effect in Missouri since 1893, and as required by its railroad commissioners. The unequal, partial, arbitrary reduction in rates upon articles affected by said Act of 1905 as compared with other commodities and between the different commodities themselves included in said act, not only works an injustice between the shippers, purchasers, manufacturers of the state of Missouri and -prives them of their property without due process of law and deprives them of the equal protection of the laws, but likewise operates to deprive your orator of its property without due process of law and deprives it of the equal protection of the laws in that the legislature, having established maximum rates of charges for the transportation of all kinds of property, which are presumably fair and reasonable, now attempts to further regulate the affairs of your orator and to require it to discriminate in favor of certain persons and shippers and to give them a right of transportation for a less rate than the general rate heretofore fixed by law than is just and reasonable in view of the cost to the carrier or the value of the service rendered to the shipper.

In consideration whereof, and forasmuch as your orator is remediless in the premises, and by the strict rules of the common law
21 can only have relief in a court of equity where matters of this kind are properly cognizable and relievable, your orator prays: First, That the said act of the legislature of Missouri set forth in paragraph VII of this bill, and for convenience called the Act of 1905, be declared unconstitutional, unenforcible and not binding

upon your orator. Second, That the defendants, John A. Knott, Joseph P. Rice and Frank H. Wightman, as railroad commissioners of the state of Missouri, their successors in office, agents and servants, be temporarily and permanently enjoined and restrained from taking any step to put in force the maximum rates mentioned in said Act of 1905, from requiring your orator to post same at any place or to file same with them; from receiving a schedule thereof to be filed with them; from taking or making out, or printing, or delivering any schedule of rates for your orator containing the maximum rates fixed by said act; from instituting or permitting any investigation of any complaint that any rate is unreasonable, extortionate or unjust because higher than the maximum rate fixed by said Act of 1905; from directing the attorney general of the state or any prosecuting attorney or other attorney therein to prosecute or assist in — the schedule adopting the said maximum rates, or for any failure to recognize, adopt or comply with said Act of 1905. Third, That defendant, Herbert S. Hadley, the attorney general, be temporarily and permanently enjoined and restrained from prosecuting or assisting in the prosecution of any suit or action against your orator to enforce against it in any action, directly or indirectly, any penalty in any wise dependent or based upon the failure of your orator to recognize and abide by the said Act of 1905. Fourth, That the defendants Wyeth Hardware & Manufacturing Company and Jones-Payne Hat Company and all other shippers affected by this proceeding, be temporarily and permanently enjoined and restrained from instituting any action under or taking any steps to collect any penalties or damages for the alleged violation of said Act of 1905.

22 Fifth, That your orator have such other and further relief as may be just and equitable.

And may it please your honors to grant unto your orator a writ of subpœna of the United States of America, issuing out of and under the seal of this Honorable Court, directed to the said John A. Knott, Joseph P. Rice and Frank H. Wightman, railroad commissioners of Missouri; Herbert S. Hadley, attorney general of the State of Missouri; and —— ——, —— ——, and —— —— commanding them and each of them on a day certain therein to be named, and under a certain penalty, to be and appear before this Honorable Court, then and there to answer, but not under oath, such oath being expressly waived, all and singular the premises, and to stand to, perform and abide by such order, direction and decree as may be made against them in the premises.

R. A. BROWN,
Solicitor for Complainant.

FRANK HAGERMAN,
Of Counsel.

STATE OF MISSOURI,
County of Buchanan, ss:

I, S. M. Adsit, upon oath say, I am general freight and passenger agent of The Saint Joseph and Grand Island Railway Company, complainant in above entitled bill, and as such officer have charge

of the traffic operations of said company, and of the matters and things mentioned in said bill which I have read. I know the contents thereof, and the same are true of my own knowledge, except as to those matters therein stated upon information and belief, and as to those matters, I believe them to be true.

S. M. ADSIT.

Subscribed and sworn to before me this 14th day of June, 1905.

FRANCIS W. RUSSELL,
Notary Public.

[SEAL.]

My commission expires June 20, 1908.

23 Afterwards, to-wit, on the 16th day of June A. D. 1905, a restraining order was made and entered.
Said restraining order is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 3001.

THE ST. JOSEPH & GRAND ISLAND RAILWAY CO., Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri; John A. Knott, Joseph P. Rice and Frank A. Wightman, Railroad Commissioners of the State of Missouri, and Thomas Amrine and Edward L. Nance, Defendants.

Restraining Order.

The original bill of complaint having been this June 16, 1905, by the solicitors for complainant duly presented, and the court being fully advised in the premises, orders and decrees: Complainant's application for temporary injunction herein is set down for hearing at the United States Circuit Court room in Kansas City, Missouri, on June 26, 1905, at 10 o'clock a. m., or as soon thereafter as it is convenient for the court to hear the same.

In the meantime, and until the further order of court herein, each and all of the above named defendant railroad commissioners, their agents, servants and successors, are restrained from taking any steps to put in force the maximum rates mentioned in the act of the legislature of the State of Missouri, approved April 15, 1905, and entitled "An Act, entitled 'An act to amend chapter 12 of the Revised Statutes of Missouri, revision of 1899, entitled "Corporations, private," by repealing section 1194 of said Revised Statutes, being part of article IV of said chapter concerning railroad classification—charges—commissioners, and to enact in lieu thereof the following new sections providing for the regulation of freight charges by railroads and the recovery of penalties for the violation thereof'"; from requiring complainant to post said maximum rates at any place, or to file same with them; from requiring a schedule thereof to be filed

with them; from taking or making out, or printing, or delivering any schedule of rates for complainant containing the maximum rates fixed by said act; from instituting any investigation of any complaint that any rate is unreasonable, extortionate or unjust because higher than the maximum rate fixed by said act; from directing the attorney general of the state, or any prosecuting attorney therein to prosecute or assist in prosecuting complainant directly or indirectly for any failure to file a schedule adopting said maximum rates; or for any failure to recognize, adopt or comply with said act.

And in the meantime, and until the further order of court herein, the above named attorney general and his assistants and successors are restrained from bringing any suit or action against complainant to enforce against it, directly or indirectly, any penalty in anywise dependent or based upon the failure of complainant to recognize or abide by the said act of the legislature.

And in the meantime and until the further order of court herein, the defendants Herbert S. Hadley, Attorney General of the State of Missouri, John A. Knott, Joseph P. Rice and Frank A. Wightman, Railroad Commissioners of the State of Missouri; and Thomas Amries and Edward L. Nanes, and all other shippers affected by this proceeding, are restrained from instituting any action, or taking any steps to collect any penalties for alleged violation of said act of 1905.

(Signed) SMITH McPHERSON, *Judge*.

Received copy of foregoing restraining order this — day of June, 1905, and the undersigned defendants enter their appearances in said cause as of the August, 1905, rules.

——, ——.

Afterwards, to-wit, on the 27th day of June, 1905, the following Order continuing Restraining Order was filed and entered of record:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 3988.

St. Louis and San Francisco Railroad Company, Complainant,

vs.

Herbert S. Hadley, Attorney General of the State of Missouri, and Joseph P. Rice, John A. Knott and Frank A. Wightman, Railroad Commissioners of the State of Missouri, et al., Defendants.

No. 3989.

The Atchison, Topeka and Santa Fe Railway Company, Complainant,

vs.

Same, Defendants.

No. 2990.

THE ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

No. 2991.

THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

No. 2992.

THE ST. LOUIS, KANSAS CITY AND COLORADO RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

No. 2993.

THE KANSAS CITY SOUTHERN RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

26 No. 2994.

THE ST. LOUIS & HANNIBAL RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

No. 2995.

THE MISSOURI PACIFIC RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

No. 2996.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

No. 2997.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

No. 2998.

CHICAGO, BURLINGTON & QUINCY RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

No. 2999.

QUINCY, OMAHA AND KANSAS CITY RAILROAD COMPANY, Complainant,
vs.
SAME, Defendants.

No. 3000.

THE WABASH RAILROAD COMPANY, Complainant,
vs.
SAME, Defendants.

No. 3001.

THE ST. JOSEPH & GRAND ISLAND RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

27 No. 3002.

KANSAS CITY, CLINTON & SPRINGFIELD RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

No. 3003.

CHICAGO GREAT WESTERN RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

No. 3004.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

No. 3006.

THE CHICAGO & ALTON RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

Order.

The application of complainants in above cases for temporary injunction coming on for hearing, this June 27th, 1905, complainants appearing by Frank Hagerman, their solicitor, and the Attorney

General in person. At the request of the latter it is ordered that the said application be continued till July 8, 1905, and until further order of court the restraining orders heretofore issued shall continue in force.

(Signed) JNO. F. PHILIPS,
(Signed) SMITH McPHERSON, *Judges.*

28 Thereupon a copy of said restraining order was issued, and the same was duly returned and filed on the 8th day of July, 1905, with the following endorsement:

Received copy of foregoing restraining order this 17th day of June, 1905, and the undersigned defendants enter their appearances in said case as of the August 1905, Rules.

JONES PAYNE HAT CO.,
By MINITY JONES, *Pt.*
WYETH HDW. & MFG. CO.,
J. A. WARNER, *Sec'y.*

29 Afterwards, to-wit, on the 12th day of July, 1905, the following order continuing restraining order was filed and entered of record, to-wit:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 3001.

ST. LOUIS & GRAND ISLAND RAILWAY CO., Complainant,
vs.
HERBERT S. HADLEY, Attorney General; Joseph P. Rice, John A. Knott and Frank A. Wightman, Railroad Commissioners, et al., Defendants.

Order.

This cause came on for hearing this 12th day of July, 1905, upon complainant's application for temporary injunction. The complainant, the attorney general and the defendant railroad commissioners appeared by counsel; the other defendants having been notified of the hearing; and the court being fully advised in the premises, orders and adjudges:

1. The restraining order heretofore issued herein shall continue and remain in force as a temporary injunction.

2. The complainant shall, on or before the 25th day of July, 1905, file herein an injunction bond in the sum of Ten Thousand dollars, to be approved by a judge or a clerk of this court, the defendants consenting to accept the individual bond of the complainant, conditioned to pay, in case said injunction be dissolved, all damages ascertained herein to have been sustained by the defendants or any of them, or any person becoming a defendant herein.

(Signed) JNO. F. PHILIPS, *Judge.*

30 Afterwards, to-wit, on the 22nd day of July, 1905, the Injunction Bond was approved and filed. Said Injunction Bond is in words and figures as follows, to-wit:—

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 3001.

THE ST. JOSEPH & GRAND ISLAND RAILWAY COMPANY, Complainant,

vs.

HERBERT S. HADLEY, Attorney General; JOSEPH P. RICE, JOHN A. Knott and Frank A. Wightman, Railroad Commissioners, et al., Defendants.

Injunction Bond.

Know all men by these Presents, That the above complainant is held and firmly bound to above named defendants in the penal sum of Ten Thousand dollars ($10,000) well and truly to be paid in lawful money of the United States, for the payment of which it binds itself, its executors, administrators, successors and assigns.

This bond is made upon these conditions:

Whereas, the Court in above entitled cause made an order on July 12, 1905, granting a temporary injunction,

Now if said obligor pays, in case said injunction be dissolved, all damages ascertained herein to have been sustained by the defendants or any of them, or any person becoming a defendant herein then this obligation to be void; otherwise in force and effect.

Witness the hand and seal of said party this July 13, 1905.

[SEAL.] THE ST. JOSEPH & GRAND ISLAND RAILWAY COMPANY,
By J. BERLINGETT,
General Superintendent.

Attest:
F. W. RUSSELL, *Secretary.*

The foregoing bond is approved this 22 day of July, 1905, the appearing defendants waiving the necessity of any surety signing the bond.

ADELAIDE UTTER, *Clerk.*

31 Afterwards towit on the 7th day of August, A. D. 1905, the joint demurrer of John A. Knott et al., was filed. Said demurrer is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 3001.

THE ST. JOSEPH AND GRAND ISLAND RAILWAY COMPANY, Complainant,

vs.

JOHN A. KNOTT, JOSEPH P. RICE and FRANK A. WIGHTMAN, Railroad Commissioners of the State of Missouri; Herbert S. Hadley, Attorney General of the State of Missouri, and Jones-Payne Hat Co. and Wyeth Hardware and Manufacturing Company, Defendants.

The Joint Demurrer of John A. Knott, Joseph P. Rice and Frank A. Wightman, Railroad Commissioners of the State of Missouri, Three of the Above-named Defendants, to the Bill of Complaint of the St. Joseph and Grand Island Railway Company, the Above-named Complainant.

These defendants, respectively, by protestation, not confessing or acknowledging all or any of the matters or things in the said bill of complaint contained, to be true, in such manner and form as the same are therein and thereby set forth and alleged, demur to the said bill, and for causes of demurrer show:

1. That it appears by the complainant's own showing by the said bill, that it is not entitled to the relief prayed by said bill against these defendants, or either of them.

32 2. That said bill of complaint of the complainant is wholly without equity.

3. That it does not appear from said bill of complaint that charges for the transportation, between points within this State, of such articles of freight, maximum rates for the transportation of which are not fixed by said Act of 1905, might not or could not have been established by the complainant, if it had chosen to make any effort to do so, or by said Board of Railroad Commissioners, if it had been permitted by the complainant to do so, at such rates as would have been reasonable and just, both to the complainant and to the public, observance of which and of the provisions of the Act of 1905, in the transportation by complainant of its entire intra-state traffic, would, as a whole, have rendered to the complainant a fair and reasonable profit for the service of transporting the same. The complainant has made no effort or attempt to readjust its schedules of freight rates, as a whole, with a view of complying with the requirements of said Act of 1905, nor has it afforded to the said Board of Railroad Commissioners any opportunity, on its part, of making such effort, but, on the contrary, by filing the bill of complaint herein on the day said Act of 1905 took effect, and obtaining the restraining order herein, before said Board of Railroad Commissioners could, by any possibility, have taken any action in the

direction of establishing freight rate schedules for intra-state traffic, which, considered as a whole, would produce a reasonable compensation to the complainant for its service, has prevented said Board from making any such effort.

33 Wherefore, and for divers other good causes of demurrer appearing on said bill, these defendants demur thereto, and they pray the judgment of this honorable Court whether they shall be compelled to make further or any answer to the said bill; and they humbly pray to be hence dismissed with their reasonable costs in their behalf sustained.

HERBERT S. HADLEY,
Attorney General;
JOHN KENNISH,
SANFORD B. LADD,
Solicitors for Defendants.

SANFORD B. LADD,
Of Counsel.

I hereby certify that the foregoing demurrer is, in my opinion, well founded in point of law.

SANFORD B. LADD,
Of Counsel for Defendants.

34 Afterwards, to-wit, on the 7th day of August 1905, the demurrer of Herbert S. Hadley, Attorney General, was filed. Said demurrer is in words and figures as follows, to-wit:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 3001.

THE ST. JOSEPH AND GRAND ISLAND RAILWAY COMPANY, Complainant,

vs.

JOHN A. KNOTT, JOSEPH P. RICE and FRANK A. WIGHTMAN, Railroad Commissioners of the State of Missouri; Herbert S. Hadley, Attorney General of the State of Missouri, and Jones-Payne Hat Co. and Wyeth Hardware and Manufacturing Company, Defendants.

The Demurrer of Herbert S. Hadley, Attorney General of the State of Missouri, One of the Above-named Defendants, to the Bill of Complaint of St. Joseph and Grand Island Railway Company, the Above-named Complainant.

This defendant, by protestation, not confessing or acknowledging all or any of the matters or things in the said bill of complaint contained, to be true, in such manner and form as the same are therein and thereby set forth and alleged, demurs to the said bill, and for cause of demurrer shows:

1. That it appears by the complainant's own showing by the said bill, that it is not entitled to the relief prayed by said bill, or any relief whatever, against this defendant.

2. The said bill of complaint of the complainant is wholly without equity.

3. That it does not appear from said bill of complaint that charges for the transportation, between points within this State, of
35 such articles of freight, maximum rates for the transportation of which are not fixed by said Act of 1905, might not or could not have been established by the complainant, if it had chosen to make any effort to do so, or by said Board of Railroad Commissioners, if it had been permitted by the complainant to do so, at such rates as would have been reasonable and just, both to the complainant and to the public, observance of which and of the provisions of the Act of 1905, in the transportation by complainant of its intra-state traffic, would, as a whole, have rendered to the complainant a fair and reasonable profit for the service of transporting the same. The complainant has made no effort or attempt to readjust its schedules of freight rates, as a whole, with a view of complying with the requirements of said Act of 1905, nor has it afforded to the said Board of Railroad Commissioners any opportunity on its part, of making such effort, but, on the contrary, by filing the bill of complaint herein on the day said act of 1905 took effect, and obtaining the restraining order herein, before said Board of Railroad Commissioners could, by any possibility, have taken any action in the direction of establishing freight rate schedules for intra-state traffic, which, considered as a whole, would produce a reasonable compensation to the complainant for its service, has prevented said Board from making any such effort.

4. That this defendant is not a proper party defendant to the bill of complaint.

Wherefore, and for divers other good causes of demurrer appearing on said bill, this defendant demurs thereto, and he prays the judgment of this Honorable Court whether he shall be compelled to make further answer, or any answer, to the said bill; and he humbly prays to be hence dismissed with his reasonable costs in his behalf sustained.

HERBERT S. HADLEY,
Attorney General;

36 JOHN KENNISH,
SANFORD B. LADD,
Solicitors for Defendants.

SANFORD B. LADD,
Of Counsel.

I hereby certify that the foregoing demurrer is, in my opinion, well founded in point of law.

SANFORD B. LADD,
Of Counsel for Defendant.

37 Afterwards, to-wit, on the 14th day of October, 1905, a waiver of affidavits to demurrers was filed. Said waiver of affidavits is in words and figures as follows, to-wit:—

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. —.

THE ST. JOSEPH & GRAND ISLAND RAILWAY COMPANY, Complainant,

vs.

JOHN A. KNOTT et al., Defendants.

The affidavits of the defendants to the several demurrers this day filed herein to the Bill of Complaint, are hereby waived.
Kansas City, Mo., August 7, 1905.

FRANK HAGERMAN,
Solicitors for Complainant.

38 Afterwards, to-wit, on the 14th day of October, 1905, the following order was filed and entered of record:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 3001.

THE ST. JOSEPH & GRAND ISLAND RAILWAY CO., Complainant,

vs.

JOHN A. KNOTT et al., Defendants.

Order.

This cause coming on for hearing this October 14, 1905, upon each and all of the demurrers heretofore filed by defendants herein, the complainant appeared by Frank Hagerman, its solicitor, and said demurring defendants by Sanford B. Ladd, their solicitor, and the court being fully advised in the premises, overrules each and all of the said demurrers, and at the request of the said solicitor, of said defendants they are given until the November 1905, Rules in which to file answers.

(Signed) SMITH McPHERSON, *Judge.*

39 Afterwards, towit, on the 28th day of November, A. D. 1905, the joint and several answer of John A. Knott et al. was filed. Said answer is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 3001.

THE ST. JOSEPH & GRAND ISLAND RAILWAY COMPANY, Complainants,

vs.

JOHN A. KNOTT, JOSEPH P. RICE and FRANK A. WIGHTMAN, Railroad Commissioners of the State of Missouri; Herbert S. Hadley, Attorney General of the State of Missouri, and Jones-Payne Hat Co. and Wyeth Hardware Manufacturing Co., Defendants.

The Joint and Several Answer of John A. Knott, Joseph P. Rice and Frank A. Wightman, Three of the Defendants, to the Bill of Complaint of the St. Joseph & Grand Island Railway Company, Complainant.

These defendants respectively now and at all times hereafter saving to themselves all and all manner of benefit of exception or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in the said bill contained, for answer thereto, or to so much thereof as these defendants are advised it is material or necessary for them to make answer to, answering, say:

I

They admit the averments of the paragraph numbered I of the complainant's bill of complaint, except in the following particular; they say that they have no knowledge, information or belief as to whether the mileage of the railroad leased and operated in the counties mentioned in said bill of complaint, amounts, in the aggregate, to sixty-one and fifteen hundredths (61.15) miles.

40 II.

These defendants admit that this cause arises under the Constitution and laws of the United States; but they deny that said Act of 1905 is unconstitutional or violative of the provisions of the Constitution of the United States or of the Fourteenth Amendment thereto, or contrary to the laws of the United States. They admit that the matter and amount in dispute exceeds exxclusive of interest and costs, the sum or value of Two Thousand Dollars ($2,000).

III.

They admit that they constitute the Board of Railroad Commissioners of the state of Missouri, and that the defendant, Herbert S. Hadley, is the Attorney General of the State of Missouri, but they deny that either they or the said defendant, Hadley, are required by law to do or perform the special duties mentioned in said bill of complaint, except as in this answer hereinafter admitted.

IV.

They admit that the other defendants are citizens and residents respectively of the State of Missouri, and of the counties of said state mentioned in paragraph IV of said bill of complaint; but whether each or any of them are engaged in shipping over the complainant's road or other roads in the State of Missouri, any of the commodities mentioned in the Act of 1905, or whether they represent any class of shippers, these defendants have no knowledge, information or belief.

V.

They admit that paragraph V of the complainant's bill of complaint correctly sets out Sections 1191, 1192 and 1193 of
41 the Revised Statutes of Missouri, of 1899, and that Section 1194 of said Revised Statutes fixed the maximum rates for the classes of freight designated in said Section 1193, as Classes D, E, F, G, H, I and J, respectively. They admit that the statutes of the State provide for the election and qualification of Railroad Commissioners, and prescribe their special duties, and as to the allegations in paragraph V of said bill of complaint, regarding the special duties imposed upon them, and upon prosecuting attorneys and the Attorney General, they aver that Articles II and IV of Chapter 12 of the Revised Statutes of Missouri, of 1899, and an Act of the General Assembly of the State of Missouri entitled, "An Act to amend Chapter 12 of the Revised Statutes of the State of Missouri, of 1899, entitled 'Corporations, private,' by adding two new sections after Section 1194, be known as Sections 1194*a* and 1194*b*, providing that the board of railroad and warehouse commissioners shall fix, maintain, establish, reduce and modify freight rates upon all railroads in this state, and providing for the manner of so doing and enforcing the same," approved April 6, 1903, published in the "Laws of Missouri, passed at the Session of the Forty-second General Assembly," at page 132, of which said Statutes and Act this court will take judicial notice, prescribe particularly all the duties imposed by law upon these defendants, constituting the board of Railroad Commissioners, and upon prosecuting attorneys and the Attorney General, respecting freight rates and the enforcement of any laws of this state governing or affecting the same; and they pray leave to refer to said statutes and said Act, and that the same may be considered in connection with this answer with like effect as if they had been fully set out herein.

42 VI.

These defendants admit the passage by the Legislature of the state of Missouri, of the Act approved April 6, 1903, and that said Act is correctly set out in paragraph VI of said bill of complaint.

VII.

These defendants admit the passage by the legislature of the State of Missouri, of the Act approved April 15, 1905, and that said Act

is correctly set out in paragraph VII of said bill of complaint. They admit that said last named Act took effect on the 16th day of June, 1905; that the rates at the time of the filing of said bill of complaint being charged by the complainant for the transportation of freight of the character mentioned in said last named Act, were shown in schedules on file with the Railroad Commissioners; but these defendants deny that said rates so charged by complainant were, as respects all the freight of the character mentioned in said Act, in excess of the maximum rates fixed by said Act of 1905. They admit that as to some of the commodities mentioned in said Act, the same would require some reduction in the rates charged by the complainant for the transportation thereof at the time of the filing of said bill of complaint, and that such reduction would make necessary a change in the schedules so filed by the complainant with the Railroad Commissioners; but these defendants deny that such change could not and cannot be made by the complainant without jeopardizing its property interests. These defendants deny that they had at or before the filing of said bill of complaint, threatened to enforce the provisions of said Act of 1905 by entering upon investigations, either upon the in-
stigation of the Board of Railroad Commissioners or on the
43 complaint of shippers, or by determining or adjudging com-
plainant's then existing schedule of rates to be unreasonable, unjust or extortionate, or by requiring the complainant, under pain of any penalties, to file and publish a new schedule fixing rates not in excess of those mentioned in said Act of 1905; and they deny that they proposed to do any of said things. They deny that they proposed to file, post or publish as the complainant's schedule, the maximum rates fixed in said Act of 1905, if the complainant should refuse to do so, or to direct any prosecuting attorney to prosecute or recover of complainant any penalties, or to direct the Attorney General to assist in any such prosecution, or recover any penalties for the complainant's failure to comply with the orders which they proposed from time to time to make in investigations instituted for the enforcement of said act of 1905. They deny that at that time they proposed to make any such investigations. On the contrary, these defendants aver that when this suit was begun the time had not arrived at which these defendants could take any action whatever under or in pursuance of said Act of 1905, and that they were not at that time proposing, because the time had not then arrived, when they, as such Board of Railroad Commissioners, could properly or lawfully propose any action in the premises. They had not, as a Board, determined or considered the course proper to be pursued by them in respect of the matter when said Act of 1905 should have taken effect. They deny that any prosecuting attorney or the Attorney General would have conducted such prosecutions, or sought to recover any such penalties.

As to whether shippers along the line of the complainant's railroad were then and are now numerous, or engaged daily or at all in mak-
ing or receiving shipments to or from points in the state of
44 Missouri of any freight of the special classes designated in said
Act of 1905, these defendants have no knowledge, information or belief. They deny that by any such shippers or shipper there

would have been or will be instituted suits to recover of the complainany any damages or attorneys' fees for charging rates higher than those fixed by said Act of 1905.

Whether any other shippers in the counties in the state where the complainant's line of road extends, are interested with those named as defendants herein, these defendants have no knowledge, information or belief; but they deny that any shipper or other person not named as a defendant in this action can or will be bound by any decree which may be entered herein.

VIII.

These defendants deny that said Act of 1905 is invalid or inoperative or of no force or effect for any of the reasons mentioned in paragraph VIII of the complainant's said bill of complaint. They deny that said Act fixes rates confiscatory in their nature or unreasonable in amount, or insufficient to permit the complainant to operate its property in Missouri without loss, or makes it impossible for freight to be carried by the complainant between points in Missouri, at any profit. They deny that all or any part of said Act is contrary to or violative of the provisions of the Constitution of the United States, or of the Fourteenth Amendment thereto. They deny that said Act is invalid as alleged in paragraph XII or paragraph XII- of said bill of complaint, or that it is violative of said Fourteenth Amendment to the Constitution of the United States. They deny that the provisions of said Act, that in computing the rate of freight, the distance shall be computed from the point where it is received to the point
45 of destination in the state, notwithstanding it may pass from one road to another, impairs the complainant's freedom of contract or fixes a rate for it based upon carriage over the line of another road, or that thereby any provision of the federal constitution or of any amendment thereto is violated, or that the freedom of contract guaranteed by Section 4 of Article 2 of the State Constitution is denied. They deny that said Section 1194*a* is a discrimination between individuals and companies, or denies to the complainant the equal protection of the law guaranteed to it by the Fourteenth Amendment to the Constitution of the United States.

These defendants further aver that even if said Section 1194*a* did operate to discriminate against the complainant, it might be stricken out and Section 1194 would remain a valid and complete enactment, capable of enforcement. They aver that the effect of said Section 1194*a* is not to discriminate against the complainant, and that at the time of the taking effect of said Act of 1905, there was not and is not now any railroad or part of railroad in the state of Missouri, which is not owned and operated by a railroad company. They deny that said law as it now stands is uncertain, as averred in subdivision (*e*) of paragraph VIII of the complainant's bill of complaint, for the reason stated therein, or for any other reason, or that said Act of 1905 is invalid because of any reason stated in said subdivision (*e*).

IX.

These defendants have no knowledge, information or belief as to the number of miles of railroad which the complainant has in its entire system, or whether the whole of it, or that portion of it
46 in Missouri was constructed and fairly acquired at a fair and reasonable cost, or whether it was judiciously located, or whether it has at all times or ever been properly or economically operated, or whether its capitalization in bonds and stocks is fair or reasonable or less than the amount for which said road could be reproduced, or whether its fixed charges are no more than would be required to produce or acquire the property, its equipment, facilities and terminals.

Whether the complainant's lines in Missouri secure and receive a due, fair and reasonable proportionate benefit of the entire system, or the value of the property in Missouri, or its capacity for serving the public, is proportionately increased or augmented thereby, or whether the cost of constructing or replacing its railroad in Missouri, and providing and furnishing its equipment and terminals, or of constructing and replacing its entire system to-day would exceed its original cost, these defendants have no knowledge, information or belief.

These defendants deny that upon the values of the property of the complainant, it has only been able in the past to have any kind of returns, because it was operated as a part of a whole system; they deny that the rates fixed in the Act of 1905, or any of them, are unjust, unfair or unreasonable; they have no knowledge or information or belief as to whether the charges now made by complainant for transfer of passengers and freight in the other states through which its lines extend, or upon its interstate traffic are just or reasonable, and they deny that if a corresponding reduction should be made in the rates on its local business in other states upon its interstate traffic, its earnings would be reduced below a sum sufficient to pay its
47 operating expenses and taxes, and to maintain its lines of railroad and defray its fixed charges, or that no reward or profit would be left to complainant as compensation for its services as a common carrier upon its system of railroads.

X.

These defendants admit that the rates, at the time of the filing of the said bill of complaint, and now charged by the complainant for state shipments on some of the classes of freight mentioned in said Act of 1905, were and are in some cases, in excess of the maximum therein fixed, but they are informed and believe, that, as to some of the commodities mentioned in said Act, the rates charged by the complainant were and are less than the maximum rates fixed by said Act. They deny that if the charges for the classes of freight mentioned in said Act of 1905 should be made by the complainant at the maximum rates fixed in said Act, the complainant would fail to derive any profit therefrom or would be compelled to do such business at any loss. They deny that the rates fixed in said Act are unjust and

unreasonably low or confiscatory in their nature, or that they will not make a return upon the investment in the property of the complainant in this state, or that the gross receipts of all the state business which the complainant does, can or will do in Missouri, when charging the maximum rates fixed by the Act of 1905, for the classes of freight therein mentioned, will not be sufficient to pay the operating expenses and the cost of doing such business in the state, or that there will not be left any sum as profit or return upon the value of the property of the complainant devoted to the use of such business in this state.

15 They deny that the maximum rates for any class of freight mentioned in said Act of 1905 are not sufficient to pay the cost of the carriage thereof.

XI.

These defendants have no knowledge, information or belief as to the amount of the total earnings of the complainant from local and state business in Missouri for the last three years, or any one of them, or whether they were or were not the amounts stated in paragraph XI of complainant's bill of complaint.

These defendants deny that the expenses of doing such local and state business for said three years, were at all in excess of its earnings, or that said sums in any year approximated the amount stated therefor in the bill of complaint.

These defendants have no knowledge, information or belief as to whether any reduction in rates under said Act of 1905, will not increase the local traffic or whether the volume of state and local business will not be more in 1905, than it was in 1904, or as to whether the expense of doing such business will be as great, or whether, if said business should increase, there would be a proportionate increase in such expense. They have no knowledge, information or belief as to the value of that part of complainant's property in Missouri used in doing such state and local business.

These defendants deny that if the complainant, for the classes of freight mentioned in said Act of 1905, should charge the maximum rates therein fixed, its total gross receipts from local or state traffic in Missouri, would be reduced so as not to exceed $224,700 per annum. Whether the expenses of doing the business, in such case, will or will not be lessened, these defendants have no knowledge, information or belief.

16 They deny that any reduction in rates attempted by said Act of 1905, is unfair, or unjust, or that it fails to give a fair return on the investment in the complainant's property or that the enforcement of said Act will compel the complainant to do its local and state business in such a way as not to permit it to make a fair and reasonable profit thereon.

XII.

These defendants admit that the companies mentioned in paragraph XII of the complainant's bill of complaint carry the classes of freight mentioned in said Act, and that they claim that the maxi-

mum rates thereby fixed are confiscatory in their nature, and if charged would result in their doing their state business without any profit. But these defendants deny that such claim is in point of fact true.

These defendants deny that the rates fixed by said Act of 1905 are unreasonably low as against any of said companies or that they will not permit any of them to make a profit upon their state business, or that for that reason said Act is invalid as against any of said companies.

They deny that said Act if held valid as to complainant, is unconstitutional because of any alleged discrimination between the complainant and any other persons or corporations operating railroads in this state. They aver that the only discrimination of which the complainant will be allowed to complain, is a discrimination against itself in favor of some other person or corporation; and they deny that any of the provisions of the constitution of the United States, or of any of the amendments thereto, are in any respect violated by said Act.

50 XIII.

Further answering, and with special reference to the averments of paragraph XIII of the complainant's bill of complaint, these defendants deny that said Act of 1905, fixes and establishes maximum rates which are unjust, unreasonable or unconstitutional for any reason.

These defendants have no knowledge, information or belief as to whether the cost of transporting live stock is greater than that of any of the other commodities mentioned in said Act, or whether the same reduces the rate of said live stock on an average of twenty-one per cent, or whether the reduction in rates on sale and cement is only slight. They have no knowldege, information or belief as to whether the different articles transported on complainant's railway have been arranged in classes according to cost of carriage, price, risk of injury, bulk, volume or traffic, or any other circumstances or have remained in substantially the same classes for any period of time, or whether the same has been recognized, approved or enacted into law by any statutory classification in effect in Missouri.

They deny that any reduction in rates upon articles affected by said Act of 1905 is unequal or partial or arbitrary as compared with any other commodities, or as between the commodities included in said Act. Or that the same works any injustice between shippers, purchasers or manufacturers of the state of Missouri, or deprives them of their property without due process of law, or deprives them of the equal protection of the laws, or operates to deprive the complainant of its property without due process of law, or deprives the complainant of the equal protection of the laws by any of the methods or for any of the reasons mentioned in said paragraph XIII
51 of the bill of complaint. They deny that the legislature had or has established maximum rates of charges for the transportation of all kinds of property or that even if the legislature had done so, any change affected in such rates by said Act of 1905, is presum-

ably unfair or unreasonable in any respect. They deny that the legislature requires the complainant to discriminate in favor of any persons or shippers, or to give them a right of transportation for a less rate than the general rate heretofore fixed by any law; or that such rate is less than is just and reasonable in view of the cost to the carrier and the value of the service rendered to the shipper.

XIV.

These defendants further answering, say that they are informed and believe that this complainant and seventeen other railroad companies or corporations, owning and operating lines of railroad in the state of Missouri, immediately after the approval of said Act of 1905, agreed and came to an understanding with each other, that none of them would comply with the provisions thereof, or transport the commodities named in said Act, at the rates mentioned therein, or make any effort to revise their schedule of rates for transporting the commodities mentioned in said Act and other commodities transported by them, in such a manner as to yield obedience to said Act and at the same time derive a reasonable profit upon the fair valuation of their property necessary to carry on their intra-state business, but determined, on concerted action among themselves, to disobey said Act, to deny its validity and any obligation on their part to comply with it, and to bring suits, each of them for itself, on the day said Act should take effect, to enjoin the
52 officers of the state from taking any action or discharging any duties which might be imposed upon them by law in respect of said Act, and for the further purpose of obtaining a decree of this court adjudging said Act to be null and void upon the grounds stated in this complainant's bill of complaint.

These defendants further aver that in pursuance of said agreement and understanding, this complainant and the said seventeen other companies or corporations, did, on the 16th day of June, 1905, each for itself, file in this court its bill of complaint, all of them being upon substantially the same grounds as those stated in this complainant's bill of complaint, and praying for substantially the same relief, and did, on the same day, in each of said suits, obtain from this court a restraining order, directed to and which was served upon these defendants and the Attorney General of the state of Missouri, and certain persons designated in said bills of complaint as shippers, enjoining these defendants and the Attorney General from performing any of the duties imposed upon them as state officials, by law, looking to the enforcement of the provisions of said Act, (for the express terms of which said order these defendants pray leave to refer to the same as it appears in the record of this cause), and afterwards, while said restraining order was in force, did obtain from this court a preliminary injunction in the terms of said order, which said preliminary injunction is still operative.

These defendants say that they are informed and believe that the rates fixed by said Act of 1905, do not affect all the articles of freight transported by the complainant in its intra-state traffic, but that a

very large number of articles, and a very large part of its
53 intra-state traffic remain wholly unaffected and unregulated as to rates, by said Act or by any other existing statute. And these defendants say that the question of whether rates are compensatory or otherwise, can only be determined upon a consideration of a schedule of rates which shall embrace every article and all the freight transported by the complainant in carrying on its intra-state business.

These defendants are informed and believe that the complainant, if it had chosen to do so, instead of attacking the reasonableness or fairness of the rates upon the few articles mentioned in the Act of 1905, might have revised its schedule of tariff of rates upon all the articles of freight transported by it in carrying on its intra-state traffic, including those mentioned in said Act of 1905, in such a manner that the rates for carrying the articles not mentioned in said Act would have been not unreasonable or unjust, either to itself or to the public, and that the income derived by the complainant for performing the service of transporting freight at the rates and charges fixed in such a schedule, would have been sufficient to assure to the complainant a fair and reasonable return upon the fair value of its property necessarily employed in the carrying on of such intra-state business.

These defendants further aver that the complainant afforded to these defendants, as a Board of Railroad Commissioners, no opportunity, after said Act of 1905 took effect, to revise, adjust and fix a schedule of rates upon all the articles of freight transported by the complainant in its intra-state traffic, including those mentioned in said Act of 1905, in such a manner that the provisions of said Act of
1905, would be observed, and at the same time the rates upon
54 all other articles not mentioned in said Act, should not be unreasonable or unjust, either to the complainant or to the public.

These defendants further say that if the complainant had failed to so revise or to attempt to so revise its schedule these defendants, as such Board, would, if they had been given the opportunity, which was denied to them by the injunction in this cause, in the discharge of the duties imposed on them by law, have attempted to fix and establish such a schedule of rates upon all the articles of freight transported by the complainant in its intra-state traffic, as would have observed or complied with the provisions of said Act of 1905, and in other respects have been not unjust or unfair either to the complainant or to the public, and they believe that they could have done so.

These defendants further say that by the issue of the restraining order and preliminary injunction in this cause, they have been prevented from fixing any such schedule or attempting to fix a schedule of rates which should be just to the complainant and to shippers; that the complainant, by the filing of its bill before these defendants, as such Board, could lawfully act in the premises, has unwarrantably assumed that these defendants as such Board, would fix and establish a schedule of rates which would be unjust to the complainant.

These defendants say that in view of the statutes of this state, which define the duties to be discharged by them, as such Board,

this action ought not to be maintained, because it was brought before these defendants had any opportunity to discharge any such duties or act in the matter of a general revision of the schedule of rates, made necessary by said Act of 1905.

These defendants deny that the complainant is entitled to
55 any relief whatever against these defendants, without this, that any other matter, cause or thing in the complainant's said bill of complaint, or amendments thereto, contained, material or necessary for these defendants to make answer unto, and not herein or hereby well and sufficiently answered, confessed, traversed and avoided or denied, is true to the knowledge or belief of these defendants; all which matters and things these defendants are ready and willing to aver, maintain and prove, as this honorable court shall direct, and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

HERBERT S. HADLEY,
Attorney General.
JOHN KENNISH,
Assistant Attorney General; Solicitors for Defendants.

SANFORD B. LADD,
Of Counsel.

56 Afterwards, to-wit, on the 1st day of December A. D. 1905, the Answer of Herbert S. Hadley, Attorney General was filed. Said answer is in words & figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 3001.

THE ST. JOSEPH & GRAND ISLAND RAILWAY COMPANY, Complainant,
vs.
JOHN A. KNOTT, JOSEPH P. RICE and FRANK H. WIGTHMAN, Railroad Commissioners of the State of Missouri; Herbert S. Hadley, Attorney General of the State of Missouri, and Jones-Payne Hat Co., and Wyeth Hardware Manufacturing Co., Defendants.

The Answer of Herbert S. Hadley, Attorney General of the State of Missouri, One of the Defendants to the Bill of Complaint of the St. Joseph & Grand Island Railway Company, Complainant.

This defendant now and at all times hereafter saving to himself all and all manner of benefit of exception or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in the said bill contained, for answer thereto, or to so much thereof as this defendant is advised it is material or necessary for him to make answer to, answering, says.

I.

He admits the averments of the paragraph numbered I of the complainant's bill of complaint, except in the following particular; he says that he has no knowledge, information or belief as to whether the mileage of the railroad leased and operated in the counties mentioned in said bill of complaint, amounts, in the aggregate, to sixty-one and fifteen hundredths (61.15) miles.

57 This defendant admits that this cause arises under the Constitution and laws of the United States; but he denies that said Act of 1905 is unconstitutional or violative of the provisions of the Constitution of the United States or of the Fourteenth Amendment thereto, or contrary to the laws of the United States. He admits that the matter and amount in dispute exceeds, exclusive of interest and costs, the sum or value of Two Thousand Dollars ($2,000).

III.

He admits that the defendants, John A. Knott, Joseph P. Rice and Frank A. Wightman, constitute the Board of Railroad Commissioners of the State of Missouri, and that this defendant is the Attorney General of the State of Missouri, but he denies that either they or this defendant, are required by law to do or perform the special duties mentioned in said bill of complaint, except as in this answer hereinafter admitted.

IV.

He admits that the other defendants are citizens and residents respectively of the State of Missouri, and of the counties of said state mentioned in paragraph IV of said bill of complaint; but whether each or any of them are engaged in shipping over the complainant's road or other roads in the State of Missouri, any of the commodities mentioned in the Act of 1905, or whether they represent any class of shippers, this defendant has no knowledge, information or belief.

V.

He admits that paragraph V of the complainant's bill of complaint correctly sets out Sections 1191, 1192 and 1193 of the

58 Revised Statutes of Missouri, of 1899, and that Section 1194 of said Revised Statutes fixed the maximum rates for the classes of freight designated in said Section 1193, as Classes D, E, F, G, H, I and J, respectively. He admits that the statutes of the State provide for the election and qualification of Railroad Commissioners, and prescribe their special duties, and as to the allegations in paragraph V of said bill of complaint, regarding the special duties imposed upon them, and upon prosecuting attorneys and the Attorney General, he avers that Articles II and IV of Chapter 12 of the Revised Statutes of Missouri, of 1899, and an Act of the General Assembly of the State of Missouri entitled, "An Act to amend Chapter 12 of the Revised Statutes of the State of Missouri, of 1899, entitled 'Corporations, private,' by adding two new sections

after Section 1194, — be known as Sections 1194*a* and 1194*b*, providing that the board of railroad and warehouse commissioners shall fix, maintain, establish, reduce and modify freight rates upon all railroads in this state, and providing for the manner of so doing and enforcing the same," approved April 6, 1903, published in the "Laws of Missouri, passed at the Session of the Forty-second General Assembly," at page 132, of which said Statutes and Act this court will take judicial notice, prescribe particularly all the duties imposed by law upon those defendants, constituting the board of Railroad Commissioners, and upon prosecuting attorneys and the Attorney General, respecting freight rates and the enforcement of any laws of this state governing or affecting the same; and that he prays leave to refer to said statutes and said Act, and that the same may be considered in connection with this answer with like effect as if they had been fully set out therein.

VI.

59 This defendant admits the passage by the Legislature of the state of Missouri, of the Act approved April 6, 1903, and that said Act is correctly set out in paragraph VI of said bill of complaint.

VII.

This defendant admits the passage by the legislature of the State of Missouri, of the Act approved April 15, 1905, and that said Act is correctly set out in paragraph VII of said bill of complaint. He admits that said last named Act took effect on the 16th day of June, 1905; that the rates at the time of the filing of said bill of complaint being charged by the complainant for the transportation of freight of the character mentioned in said last named Act, were shown in schedules on file with the Railroad Commissioners; but this defendant denies that said rates so charged by complainant were, as respects all the freight of the character mentioned in said Act, in excess of the maximum rates fixed by said Act of 1905. He admits that as to some of the commodities mentioned in said Act, the same would require some reduction in the rates charged by the complainant for the transportation thereof at the time of the filing of said bill of complaint, and that such reduction would make necessary a change in the schedules so filed by the complainant with the Railroad Commissioners; but this defendant denies that such change could not and cannot be made by the complainant without jeoparadizing its property interests. This defendant denies that the Railroad Commissioners had at or before the filing of said bill of complaint, threatened to enforce the provisions of said Act of 1905 by entering upon investigations, either upon the instigation of the Board of
60 Railroad Commissioners or on the complaint of shippers, or by determining or adjudging complainant's then existing schedule of rates to be unreasonable, unjust or extortionate, or by requiring the complainant, under pain of any penalties, to file and publish a new schedule fixing rates not in excess of those mentioned in said Act of 1905; and he denies that they proposed to do any of

said things. He denies that they proposed to file, post or publish as the complainant's schedule, the maximum rates fixed in said Act of 1905; if the complainant should refuse to do so, or to direct any prosecuting attorney to prosecute or recover of complainant any penalties, or to direct the Attorney General to assist in any such prosecution, or recover any penalties for the complainant's failure to comply with the orders which they proposed from time to time to make in investigations instituted for the enforcement of said Act of 1905. He denies that at that time they proposed to make any such investigations. On the contrary, this defendant avers that when this suit was begun the time had not arrived at which the Railroad Commissioners could take any action whatever under or in pursuance of said Act of 1905, and that they were not at that time proposing, because the time had not then arrived, when they, as such Board of Railroad Commissioners, could properly or lawfully propose any action in the premises. They had not, as a Board, determined or considered the course proper to be pursued by them in respect of the matter when said Act of 1905 should have taken effect. He denies that any prosecuting attorney or the Attorney General would have conducted such prosecutions, or sought to recover any such penalties.

As to whether shippers along the line of the complainant's railroad were then and are now numerous, or engaged daily or at all in making or receiving shipments to or from points in the state
61 of Missouri of any freight of the special classes designated in said Act of 1905, this defendant has no knowledge, information or belief. He denies that by any such shippers or shipper there would have been or will be instituted suits to recover of the complainant any damages or attorneys' fees for charging rates higher than those fixed by said Act of 1905.

Whether any other shippers in the counties in the state where the complainant's line of road extends, are interested with those named as defendants herein, this defendant has no knowledge, information or belief; but he denies that any shipper or other person not named as a defendant in this action can or will be bound by any decree which may be entered herein.

VIII.

This defendant denies that said Act of 1905 is invalid or inoperative or of no force or effect for any of the reasons mentioned in paragraph VIII of the complainant's said bill of complaint. He denies that said Act fixes rates confiscatory in their nature or unreasonable in amount, or insufficient to permit the complainant to operate its property in Missouri without loss, or makes it impossible for freight to be carried by the complainant between points in Missouri, at any profit. He denies that all or any part of said Act is contrary to or violative of the provisions of the Constitution of the United States, or of the Fourteenth Amendment thereto. He denies that said Act is invalid as alleged in paragraph XII or paragraph XII- of said bill of complaint, or that it is violative of said Fourteenth Amendment to the Constitution of the United States.

He denies that the provisions of said Act, that in computing the rate of freight, the distance shall be computed from the point
62 where it is received to the point of destination in the state, notwithstanding it may pass from one road to another, impairs the complainant's freedom of contract or fixes a rate for it based upon carriage over the line of another road, or that thereby any provision of the federal constitution or of any amendment thereto is violated, or that the freedom of contract guaranteed by Section 4 of Article 2 of the State Constitution is denied. He denies that said Section 1194*a* is a discrimination between individuals and companies, or denies to the complainant the equal protection of the law guaranteed to it by the Fourteenth Amendment to the Constitution of the United States.

This defendant further avers that even if said Section 1194*a* did operate to discriminate against the complainant, it might be stricken out and Section 1194 would remain a valid and complete enactment, capable of enforcement. He avers that the effect of said Section 1194*a* is not to discriminate against the complainant, and that at the time of the taking effect of said Act of 1905, there was not and is not now any railroad or part of railroad in the state of Missouri, which is not owned and operated by a railroad company. He denies that said law as it now stands is uncertain, as averred in subdivision (*e*) of paragraph VIII of the complainant's bill of complaint, for the reason stated therein, or for any other reason, or that said Act of 1905 is invalid because of any reason stated in said subdivision (*e*).

IX.

This defendant has no knowledge, information or belief as to the number of miles of railroad which the complainant has in
63 its entire system, or whether the whole of it, or that portion of it in Missouri was constructed and fairly acquired at a fair and reasonable cost, or whether it was judiciously located, or whether it has at all times or ever been properly or economically operated, or whether its capitalization in bonds and stocks is fair or reasonable or less than the amount for which said road could be reproduced, or whether its fixed charges are not more than would be required to produce or acquire the property, its equipment, facilities and terminals.

Whether the complainant's lines in Missouri secure and receive a due, fair and reasonable proportionate benefit of the entire system, or the value of the property in Missouri, or its capacity for serving the public, is proportionately increased or augumented thereby, or whether the cost of constructing or replacing its railroad in Missouri, and providing and furnishing its equipment and terminals, or of constructing and replacing its entire system today would exceed its original cost, this defendant has no knowledge, information or belief.

This defendant denies that upon the values of the property of the complainant, it has only been able in the past to have any kind of returns, because it was operated as a part of a whole system; he de-

nies that the rates fixed in the Act of 1905, or any of them, are unjust, unfair or unreasonable; he has no knowledge, information or belief as to whether the charges now made by complainant for transfer of passengers and freight in the other states through which its lines extend, or upon its inter-state traffic are just or reasonable, and he denies that if a corresponding reduction should be made in the rates on its local business in other states upon its interstate traffic,

64 its earnings would be reduced below a sum sufficient to pay its operating expenses and taxes, and to maintain its lines of railroad and defray its fixed charges, or that no reward or profit would be left to complainant as compensation for its services as a common carrier upon its system of railroads.

X.

This defendant admits that the rates, at the time of the filing of the said bill of complaint, and now charged by the complainant for state shipments on some of the classes of freight mentioned in said Act of 1905, were and are in some cases, in excess of the maximum therein fixed, but he is informed and believes that, as to some of the commodities mentioned in said Act, the rates charged by the complainant were and are less than the maximum rates fixed by said Act. He denies that if the charges for the classes of freight mentioned in said Act of 1905 should be made by the complainant at the maximum rates fixed in said Act, the complainant would fail to derive any profit therefrom or would be compelled to do such business at any loss. He denies that the rates fixed in said Act are unjust or unreasonably low or confiscatory in their nature, or that they will not make a return upon the investment in the property of complainant in this state, or that the gross receipts of all the state business which the complainant does, can or will do in Missouri, when charging the maximum rates fixed by the Act of 1905, for the classes of freight therein mentioned, will not be sufficient to pay the operating expenses and the cost of doing such business in the state, or that there will not be left any sum as profit or return upon the value of the property of the complainant devoted to the use of such business in this state.

65 He denies that the maximum rates for any class of freight mentioned in said Act of 1905 are not sufficient to pay the cost of the carriage thereof.

XI.

This defendant has no knowledge, information or belief as to the amount of the total earnings of the complainant from local and state business in Missouri for the last three years, or any one of them, or whether they were or were not the amounts stated in paragraph XI of complainant's bill complaint.

This defendant denies that the expenses of doing such local and state business for said three years, were at all in excess of its earnings, or that such excess in any year approximated the amount stated therefor in the bill of complaint.

This defendant has no knowledge, information or belief as to whether any reduction in rates under said Act of 1905, will not increase the local traffic or whether the volume of state and local business will not be more in 1905, than it was in 1904, or as to whether the expense of doing such business will be as great, or whether, if said business should increase, there would be a proportionate increase in such expense. He has no knowledge, information or belief as to the value of that part of complainant's property in Missouri used in doing such state and local business.

This defendant denies that if the complainant, for the classes of freight mentioned in said Act of 1905, should charge the maximum rates therein fixed, its total gross receipts from local or state traffic in Missouri, would be reduced so as not to exceed $224,700 per annum. Whether the expenses of doing the business, in such case, will or will not be lessened, this defendant has no knowledge, information or belief.

66 He denies that any reduction in rates attempted by said Act of 1905, is unfair, or unjust, or that it fails to give a fair return on the investment in the complainant's property or that the enforcement of said Act will compel the complainant to do its local and state business in such a way as not to permit it to make a fair and reasonable profit thereon.

XII.

This defendant admits that the companies mentioned in paragraph XII of the complainant's bill of complaint carry the classes of freight mentioned in said Act, and that they claim that the maximum rates thereby fixed are confiscatory in their nature, and if charged would result in their doing their state business without any profit. But this defendant denies that such claim is in point of fact true.

This defendant denies that the rates fixed by said Act of 1905 are unreasonably low as against any of said companies or that they will not permit any of them to make a profit upon their state business, or that for that reason said Act is invalid as against any of said companies.

He denies that said Act if held valid as to complainant, is unconstitutional because of any alleged discrimination between the complainant and any other persons or corporations operating railroads in this state. He avers that the only discrimination of which the complainant will be allowed to complain, is a discrimination against itself in favor of some other person or corporation; and he denies that any of the provisions of the constitution of the United States, or of any of the amendments thereto, are in any respect violated by said Act.

67 XIII.

Further answering, and with special reference to the averments of paragraph XIII of the complainant's bill of complaint, this defendant denies that said Act of 1905, fixes and establishes maximum rates which are unjust, unreasonable or unconstitutional for any reason.

This defendant has no knowledge, information or belief as to whether the cost of transporting live stock is greater than that

of any of the other commodities mentioned in said Act, or whether the same reduces the rate on said live stock on an average of twenty-one per cent. or whether the reduction in rates on *sale* and cement is only slight. He has no knowledge, information or belief as to whether the different articles transported on complainant's railway have been arranged in classes according to cost of carriage, price, risk of injury, bulk, volume or traffic, or any other circumstances or have remained in substantially the same classes for any period of time, or whether the same has been recognized, approved or enacted into law by any statutory classification in effect in Missouri.

He denies that any reduction in rates upon articles affected by said Act of 1905 is unequal or partial or arbitrary as compared with any other commodities, or as between the commodities included in said Act. Or that the same works any injustice between shippers, purchasers or manufacturers of the state of Missouri, or deprives them of their property without due process of law, or deprives them of the equal protection of the laws, or operates to deprive the complainant of its property without due process of law, or deprives the complainant of the equal protection of the laws by any
68 of the methods or for any of the reasons mentioned in said paragraph XIII of the bill of complaint. He denies that the legislature had or has established maximum rates of charges for the transportation of all kinds of property or that even if the legislature had done so, any change effected in such rates by said Act of 1905, is presumably unfair or unreasonable in any respect. He denies that the legislature requires the complainant to discriminate in favor of any persons or shippers, or to give them a right of transportation for a less rate than the general rate heretofore fixed by any law; or that such rate is less than is just and reasonable in view of the cost to the carrier and the value of the service rendered to the shipper.

XIV.

This defendant, further answering, avers that he is not a proper party defendant to said bill of complaint, and that the same is wholly without equity as against this defendant.

XV.

This defendant, further answering, says that he is informed and believes that this complainant and seventeen other railroad companies or corporations, owning and operating lines of railroad in the state of Missouri, immediately after the approval of said Act of 1905, agreed and came to an understanding with each other, that none of them would comply with the provisions thereof, or transport the commodities named in said Act, at the rates mentioned therein, or make any effort to revise their schedules of rates for transporting the commodities mentioned in said Act and other commodities transported by them, in such a manner as to yield obedience to said Act and at the same time derive a reasonable profit upon the fair valuation of their property necessary to carry on their intra-state business, but determined, on concerted action among themselves, to
69 disobey said Act, to deny its validity and any obligation on their part to comply with it, and to bring suits, each of them

for itself, on the day said act should take effect, to enjoin the officers of the state from taking any action or discharging any duties which might be imposed upon them by law in respect of said Act, and for the further purpose of obtaining a decree of this court adjudging said Act to be null and void upon the grounds stated in this complainant's bill of complaint.

This defendant further avers that in pursuance of said agreement and understanding, this complainant and the said seventeen other companies or corporations, did, on the 16th day of June, 1905, each for itself, file in this court its bill of complaint, all of them being upon substantially the same grounds as those stated in this complainant's bill of complaint, and praying for substantially the same relief, and did, on the same day, in each of said suits, obtain from this court a restraining order, directed to and which was served upon the members of said Board of Railroad Commissioners, this defendant and certain other persons designated in said bills of complaint as shippers, enjoining this defendant and the said Board from performing any of the duties imposed upon them as state officials, by law, looking to the enforcement of the provisions of said Act, (for the express terms of which said order this defendant prays leave to refer to the same as it appears in the record of this cause), and afterwards, while said restraining order was in force, did obtain from this court a preliminary injunction in the terms of said order, which said preliminary injunction is still operative.

This defendant says that he is informed and believes that the rates fixed by said Act of 1905, do not affect all the articles of freight transported by the complainant in its intra-state traffic, but that a very large number of articles, and a very large part of its intra-state traffic remain wholly unaffected and unregulated as to rates, by said Act or by any other existing statute. And this defendant says that the question of whether rates are compensatory or otherwise, can only be determined upon a consideration of a schedule of rates which shall embrace every article and all the freight transported by the complainant in carrying on its intra-state business.

This defendant is informed and believes that the complainant, if it had chosen to do so, instead of attacking the reasonableness or fairness of the rates upon the few articles mentioned in the Act of 1905, might have revised its schedule or tariff of rates upon all the articles of freight transported by it in carrying on its intra-state traffic, including those mentioned in said Act of 1905, in such a manner that the rates for carrying the articles not mentioned in said Act would have been not unreasonable or unjust, either to itself or to the public, and that the income derived by the complainant for performing the service of transporting freight at the rates and charges fixed in such a schedule, would have been sufficient to assure to the complainant a fair and reasonable return upon the fair value of its property necessarily employed in the carrying on of such intra-state business.

This defendant further avers that the complainant afforded to the Board of Railroad Commissioners, no opportunity, after said Act of

1905 took effect, to revise, adjust and fix a schedule of rates upon all the articles of freight transported by the complainant in its intra-state traffic, including those mentioned in said Act of 1905, in such a manner that the provisions of said Act of 1905, would be observed,
71 and at the same time the rates upon all other articles not mentioned in said Act, should not be unreasonable or unjust, either to the complainant or to the public.

This defendant is informed and believes that if the complainant had failed to so revise or to attempt to so revise its schedule the defendants, members of such Board, would, if they had been given the opportunity, which was denied to them by the injunction in this cause, in the discharge of the duties imposed on them by law, have attempted to fix and establish such a schedule of rates upon all the articles of freight transported by the complainant in its intra-state traffic, as would have observed or complied with the provisions of said Act of 1905, and in other respects have been not unjust or unfair either to the complainant or to the public, and he believes that they could have done so.

This defendant further says that by the issue of the restraining order and preliminary injunction in this cause, the members of said Board have been prevented from fixing any such schedule or attempting to fix a schedule of rates which should be just to the complainant and to shippers; that the complainant, by the filing of its bill before they, as such Board, could lawfully act in the premises, has unwarrantably assumed that they, as such board, would fix and establish a schedule of rates which would be unjust to the complainant.

This defendant says that in view of the statutes of this state, which define the duties to be discharged by them, as such Board, this action ought not to be maintained, because it was brought before they had any opportunity to discharge any of such duties or act in the matter of a general revision of the schedule of rates, made necessary by said Act of 1905.

This defendant denies that the complainant is entitled to
72 any relief whatever against this defendant, without this, that any other matter, cause or thing in the complainant's said bill of complaint, or amendments thereto, contained, material or necessary for this defendant to make answer unto, and not herein or hereby well and sufficiently answered, confessed, traversed and avoided or denied, is true to the knowledge or belief of this defendant; all which matters and things this defendant is ready and willing to aver, maintain and prove, as this honorable court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

HERBERT S. HADLEY,
Attorney General;
JOHN KENNISH,
Assistant Attorney General;
Solicitors for Defendants.

SANFORD B. LADD,
Of Counsel.

73. Afterwards, [illegible], on the 17th day of February, A. D. 1906, the replication of complainant to the answer of John A. Knott et al., was filed. Said replication is in words and figures as follows:—

In the United States Circuit Court, for the Western Division of the Western District of Missouri.

In Equity. No. 3001.

The St. Joseph & Grand Island Railway Company, Complainant,
vs.
John A. Knott et al., Defendants.

Replication of Complainant to the Answer of John A. Knott, Joseph P. Rice and Frank A. Wightman, Railroad Commissioners.

This replicant, saving and reserving to itself all and all manner of advantages of exception which may be had and taken to the manifold errors, uncertainties and insufficiencies of the answer of the said defendants, for replication thereunto saith that it doth and will aver, maintain, and prove its said bill to be true, certain and sufficient in the law to be answered unto by the said defendants, and that the answer of the said defendants is very uncertain, evasive and insufficient in law to be replied unto by this replicant; without that that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed, or avoided, traversed, or denied, is true, all which matters and things this replicant is ready to aver, maintain and prove as this honorable Court shall direct, and prays as to and by its said bill it hath already prayed.

R. A. BROWN,
FRANK HAGERMAN,
Solicitors for Complainant.

Received a copy of the foregoing replication, and it may be filed as of proper time.

HERBERT S. HADLEY,
Attorney General;
JOHN KENNISH,
SANFORD B. LADD,
Solicitors for said Defendants.

74. Afterwards, [illegible], on the 17th day of February, A. D. 1906, the replication of complainant to the answer of Herbert S. Hadley, Attorney General, was filed.

Said replication is in words and figures as follows:—

In the United States Circuit Court for the Western Division of the Western District of Missouri.

In Equity. No. 3001.

THE ST. JOSEPH & GRAND ISLAND RAILWAY COMPANY, Complainant,
vs.
JOHN A. KNOTT et al., Defendants.

Replication of Complaint to the Answer of Herbert S. Hadley, Attorney General.

This replicant, saving and reserving to itself all and all manner of advantages of exception which may be had and taken to the manifold errors, uncertainties and insufficiences of the answer of the said defendant, for replication thereunto saith that it doth and will aver, maintain and prove its said bill to be true, certain and sufficient in the law to be answered unto by the said defendant, and that the answer of the said defendant is very uncertain, evasive and insufficient in law to be replied unto by this replicant; without that that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed, or avoided, traversed, or denied, is true; all which matters and things this replicant is ready to aver, maintain and prove as this honorable Court shall direct, and prays as in and by its said bill it hath already prayed.

R. A. BROWN,
FRANK HAGERMAN,
Solicitor for Complainant.

Received a copy of the foregoing replication, and it may be filed as of proper time.

HERBERT S. HADLEY,
Attorney General;
JOHN KENNISH,
SANFORD B. LADD,
Solicitor- for said Defendant.

75 Afterwards, to wit, on the 17th day of February, 1906, a Decree Pro Confesso was filed. Said Decree Pro Confesso is in words and figures as follows:—

In the United States Circuit Court for the Western Division of the Western District of Missouri.

No. 3001.

ST. JOSEPH & GRAND ISLAND RAILWAY COMPANY, Complainant,
vs.
JOHN A. KNOTT et al., Defendants.

Decree Pro Confesso.

It appearing that defendants Wyeth Hardware & Manufacturing Company and Jones Payne Hat Company heretofore entered their appearance herein, but have failed to file any demurrer, answer or other pleading within the time required by the rules of this court.

Now, therefore, on motion of solicitors for complainant, it is ordered that the bill of complaint in said cause be taken pro confesso as to said defendants, in accordance with the rules in such cases made and provided.

R. A. BROWN,
FRANK HAGERMAN,
Solicitors for Complainant.

76 Afterwards, to-wit, on the 26th day of February, 1906, a Motion to Refer case to a Master or appoint an Examiner was filed. Said Motion is in words and figures as follows:—

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 3001.

THE ST. JOSEPH & GRAND ISLAND RAILWAY COMPANY, Complainant,
vs.
JOHN A. KNOTT, JOSEPH P. RICE and FRANK A. WIGHTMAN, Railroad Commissioners of the State of Missouri; Herbert S. Hadley, Attorney General of the State of Missouri, and Jones Payne Hat Company, and Wyeth Hardware and Manufacturing Company, Defendants.

The defendants, John A. Knott, Joseph P. Rice and Frank A. Wightman, Railroad Commissioners of the State of Missouri, and Herbert S. Hadley, Attorney General of the State of Missouri, pray and move the court to make an order referring this cause to one of the standing masters of the court or to a Special Master to be appointed by the court, under proper directions therefor, to take the evidence herein and report the same to the court, with or without findings of fact by such Master, with all convenient speed, or an

order appointing an examiner to take the testimony in the cause and return such testimony into court with all convenient speed.

HERBERT S. HADLEY,
Attorney General;
JOHN KENNISH,
Assistant Attorney General;
Solicitors for Defendants.

SANFORD B. LADD,
Of Counsel.

77 Afterwards, to-wit, on the 27th day of February, 1906, a Motion for Oral Hearing in Open court was filed. Said Motion is in words and figures as follows, to-wit:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 2988.

ST. LOUIS AND SAN FRANCISCO RAILROAD COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, and Joseph P. Rice, John A. Knott, and Frank A. Wightman, Railroad Commissioners of the State of Missouri, et al., Defendants.

No. 2989.

THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

No. 2990.

THE ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

No. 2991.

THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

No. 2992.

THE ST. LOUIS, KANSAS CITY & COLORADO RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

No. 2993.

THE KANSAS CITY SOUTHERN RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

78 No. 2994.

THE ST. LOUIS & HANNIBAL RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

No. 2995.

THE MISSOURI PACIFIC RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

No. 2996.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

No. 2997.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

No. 2998.

CHICAGO, BURLINGTON & QUINCY RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

No. 2999.

QUINCY, OMAHA AND KANSAS CITY RAILROAD COMPANY, Complainant,
vs.
SAME, Defendants.

No. 3000.

THE WABASH RAILROAD COMPANY, Complainant,
vs.
SAME, Defendants.

No. 3001.

THE ST. JOSEPH & GRAND ISLAND RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

79 No. 3002.

KANSAS CITY, CLINTON & SPRINGFIELD RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

No. 3003.

CHICAGO GREAT WESTERN RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

No. 3004.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

No. 3006.

THE CHICAGO & ALTON RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

Motion.

Complainant in each one of the above entitled causes moves the court to set this case down for hearing upon evidence to be adduced orally in open court on final hearing.

FRANK HAGERMAN,
Solicitor for Complainants.

The above motion may be treated as if separately made and filed in each of above cases, and due and timely notice thereof is acknowledged.

HERBERT S. HADLEY,
JOHN KENNISH,
SANFORD B. LADD,
Solicitors for the Answering Defendants.

80 Afterwards, to wit, on the 5th day of March, 1906, the following order was filed and entered of record:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD CO., Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendants.

Also

In Equity.

RAILROAD COMPANIES
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004, and 3006.

Order.

The applications, in the nature of a motion, of the complainants for an oral hearing in open court of the evidence herein, and the motion of the defendants for a reference to a Master or the appointment of an Examiner to take the testimony herein, having been submitted to the court, and the causes being at issue, the court decides to refer the same to a Special Master.

It is accordingly ordered that the above numbered causes be, and they are hereby, referred to Frank L. Scofield, Esq., as Special Master, with directions to take the evidence orally on the issues involved, and to report his findings of facts thereon to the court at the earliest time practicable, together with the evidence in the causes.

(1) He shall so hear, and only until the court otherwise orders, such above numbered causes as the parties by their counsel shall at the beginning of the inquiry agree to be heard.

81 (2) The Special Master, on reasonable notice, by mail or otherwise, deemed by him most advisable, to the counsel of the respective parties, shall fix the times and places for the taking of testimony, and he is authorized to fix the same as to him may seem most convenient to the parties in interest, having regard to the suitability and necessity of such times and places.

(3) The Special Master is authorized to employ a competent and reliable stenographer, whose compensation shall be determined by the court, to take down the testimony and reduce the same to writing.

(4) The court directs that the Special Master shall proceed, after the beginning of the taking of testimony, with all reasonable speed,

as it is important to all concerned that the hearing of the causes shall be expedited. To this end, the Special Master will require respective counsel to present their testimony promptly, and confine the same to the issues involved, in order to avoid, as far as practicable, the growing evil in practice before Masters of unduly burdening the record with irrelevant and immaterial matters and the litigants with unnecessary costs.

(5) The Special Master shall permit any pleadings to be amended as by Equity Rule provided, and rule upon the admissibility of any evidence, and may refer to the court any question which arises before him in the progress of the hearing.

(6) The Clerk of this court will forthwith furnish the said Special Master with a certified copy of this order, and without further or special order turn over to said Special Master, taking his receipt therefor, any pleading or court papers pertaining to the causes being investigated by him, on his request made therefor.

(Signed) JNO. F. PHILIPS, *Judge.*

82 Afterwards, to-wit, on the 11th day of June, 1907, a Motion was filed. Said Motion is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD CO., Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendants.

Also

In Equity.

RAILROAD COMPANIES
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004, and 3006.

Motion.

Now comes complainant in each of the above entitled causes and moves the court for leave to file an amended and supplemental bill seeking to enjoin the enforcement of the various acts of the legislature regulating rates adopted at the session in 1907, and making as additional parties defendant H. R. Oglesby, Railroad Commis-

sioner, and the county judges and treasurers of the counties through which each of the complainant's lines run, together with citizens traveling upon the road of each complainant as passengers, all as will be more fully shown by the amended and supplemental bill to be presented upon the hearing of this motion.

FRANK HAGERMAN,
Solicitor for Complainants.

83 Afterwards, to-wit, on the 13th day of June, 1907, the following restraining order was filed and entered of record:—

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 3001.

ST. JOSEPH & GRAND ISLAND RAILWAY COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendants.

Order.

The complainant upon this June 13th, 1907, asked, pending a hearing of the application to file an amended and supplemental bill, the general form of which has been submitted to the court, the right to temporarily file the same and for a restraining order, but inasmuch as said application to file the bill for a temporary injunction has been set and noticed for hearing upon June 14th, 1907, at the first time convenient to the court, and it appearing to the court that it is desirable that a full argument be had after notice, yet that great harm might be done and much confusion arise if the status quo should be changed, and that it is to the best interest of the public and all parties interested that such status quo should be maintained until such hearing, it is therefore, upon the court's own motion, ordered that until further order herein, the complainant, its officers, agents and employés be and they are hereby restrained from putting in force the maximum freight and passenger rates provided by the legislative acts of 1907 mentioned in said bill and from complying with said acts, and the application for a restraining order will be heard with that for leave to file said amended bill.

(Signed) SMITH McPHERSON, *Judge.*

84 Afterwards, to-wit, on the 14th day of June, 1907, the following order was filed and entered of record, to-wit:—

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 3001.

THE ST. JOSEPH & GRAND ISLAND RAILWAY COMPANY, Complainant,

vs.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al, Defendants.

Order.

The complainant upon this June 14th, 1907, presented its amended and supplemental bill, and asked leave to file the same and for a restraining order or temporary injunction. The Court was advised by the Assistant Attorney General, who appeared, that the Attorney General is absent and desired to be heard, and in the meantime, that suits were this day by the Attorney General instituted in the Circuit Courts of the State to require the various railroad companies of the State to put in force the rates fixed by the acts of the Legislature mentioned in the bill. It is thereupon ordered that the matter be set down for hearing upon the 15th day of June, 1907, at 2 o'clock p. m., and the supplemental bill herein shall be deposited with the clerk. And it appearing to the court that it is desirable that a full hearing be had of the various matters, yet that great harm might be done and much confusion arise if the status quo should be changed, and that it is to the best interest of the public and all parties interested that such status quo should be maintained until such hearing, it is therefore, upon the Court's own motion, again ordered that until further order herein, the complainant, its officers, agents, and employés, be and they are
85 hereby restrained from putting in force the maximum freight and passenger rates provided by the legislative acts of 1907 mentioned in said bill and from complying with said acts, and the application for a restraining order and temporary injunction will be heard with that for leave to file said amended bill.

(Signed) SMITH McPHERSON, *Judge.*

86 Afterwards, to-wit, on the 15th day of June, 1907, a Notice was filed. Said Notice is in words and figures as follows:—

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD CO., Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al, Defendants.

Also

In Equity.

RAILROAD COMPANIES
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004 and 3006.

Notice.

To Defendants and Their Counsel:

Complainants will at the court room at Kansas City, Missouri, upon June 14th, 1907, at ten o'clock A. M., or as soon as counsel can be heard, ask leave of court to file an amended and supplemental bill in each of the foregoing cases, in substantial form shown by copy hereto attached, and at the same time ask for a temporary injunction.

FRANK HAGERMAN,
Solicitor for Complainants.

Received copy of this notice June 11, 1907.

HERBERT S. HADLEY,
Solicitor for Defendants.

87 Afterwards, to-wit, on the 17th day of June, 1907, the following order was filed and entered of record, to-wit:—

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. —.

THE ST. JOSEPH & GRAND ISLAND RAILWAY COMPANY, Complainant,

vs.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al, Defendants.

Order.

This cause came on for hearing this 17th day of June, 1907, the parties appearing by their counsel in response to notice and the court being fully advised in the premises, orders and adjudges:

1. Complainant's motion for leave to file an amended and supplemental bill is sustained and such leave is given, the same to be filed as of June 11th, 1907.

Upon such filing, process shall be issued so that if the court hereafter decides that the ends of justice require, and the rules of equity permit, the said bill may be treated as an amended, supplemental, ancillary, dependent or original bill.

To said bill, each of the parties named therein shall be and is hereby made a party.

2. Complainant's application for a temporary injunction is, as to the maximum freight laws of 1907, sustained. Until the further order of court herein, the defendants and each of them are enjoined from doing any act, attempting to recover any penalty, seeking to enforce or having enforced, or asserting any claim or right under or by virtue of either of the maximum freight rate acts of 1907 mentioned in said amended and supplemental bill, to the end that each defendant as to each of said acts of 1907 be restrained as effectually as the defendants were enjoined by the temporary injunc-
88 tion heretofore issued herein as to and in connection with the act of 1905. By consent of complainant, the injunction bond heretofore filed shall stand as applicable to this order the same as if it were executed and filed this day.

3. As to the passenger act of 1907, the order heretofore entered upon the court's own motion, shall remain in force until June 19th, 1907, at six o'clock a. m., at which time the rates fixed by said act shall be put and kept in force for three months without prejudice to the rights of either party for the purpose of ascertaining more definitely the extent that experience will show that the rates under said act reduce or increase the earnings of complainant.

The court reserves the power upon the application of any person interested, to hereafter make such further or other order upon this subject as it deems proper.

4. Pending the further hearing and final determination of this

case, the complainant shall preserve and keep in existence its waybills for state freight.

(Signed) SMITH McPHERSON, *Judge.*

89 The amended and supplemental bill so filed on the 11th day of June, 1907, is in words and figures as follows:—

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 3001.

ST. JOSEPH AND GRAND ISLAND RAILWAY CO., Complainant,

vs.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al, Defendants.

Complainant's Amended and Supplemental Bill.

To the Honorable Judges of the Circuit Court aforesaid:

Your orator, by leave of court, brings this, its amended bill, and thereupon avers:

1. Upon the 16th day of June, 1905, it filed herein against the Defendants in the above entitled case its original bill, (reference to which is now made the same as if copied herein), seeking to enjoin as illegal, unconstitutional and confiscatory the enforcement of the provisions of an act of the legislature of the State of Missouri (herein called the "Act of 1905"), seeking to fix certain maximum freight rates.

2. The said legislature also passed in 1905 an act approved April 14, 1905, in words and figures as follows:

"Corporations, Private: Railroad Classification, Charges—Commissioners.

An Act to Amend Article IV, Chapter 12, of the Revised Statutes of Missouri of 1899, Entitled 'Railroad Classification, Charges, Commissioners,' by Adding a New Section Thereto, to be Known as Section 1195*a*.

SECTION 1. Fixing charges for carrying undressed stone, crushed rock and building or paving brick.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION 1. That Article IV, Chapter 12, of the Revised Statutes of Missouri of 1889, entitled 'Railroad Classification, Charges, Commissioners,' be, and the same is hereby amended by adding a new section thereto, to be known as Section 1195*a*, to read as follows:

90 SECTION 1195*a*. No individual, company or corporation owning, operating, managing or leasing any railroad or part

of a railroad in this State, shall charge for or receive for carrying a carload of forty thousand pounds of undressed stone, sand or building or paving bricks more than forty cents per ton for the first ten miles, twenty cents per ton for the second ten miles, or more than five cents per ton for each additional ten miles, and any excess in weight shall be charged for at the same rate per ton as for an even carload.

Approved April 14, 1905."

3. Since the filing of said original bill and upon or about January 1, 1907, the office of the said Joseph P. Rice as a railroad and warehouse commissioner expired by limitation of the time for which he was elected and H. R. Oglesby has been duly elected and qualified as his successor, and is now acting as such. It is, therefore, proper that he should be made a party defendant hereto.

4. Each of the railroad companies operating railroads in the State of Missouri at the same time filed in this court original bills to the same purport and for the same purpose, against said members of the Railway and Warehouse Commissioners and the Attorney General and certain shippers upon the line of its road. Such proceedings were had therein that temporary injunctions were issued, the causes were put at issue and duly referred to the Honorable Frank L. Schofield to take certain proofs and make certain findings of fact. The parties agreed that before taking the evidence in all the cases, they would first take that in three of them, temporarily suspending the taking of further testimony in the others. In accordance with said agreement the evidence was taken in the three cases instituted by the Missouri Pacific, Wabash and Chicago, Burlington & Quincy Railway Companies, and the said causes are now ready for submission to the special master upon the original bills so filed, and have been set for argument before him upon June 18, 1907.

5. The Governor of the State, in giving his written reasons for approving the Act of 1905, indicated that it was with some reluctance that he signed same, expressly stating that "the rate on live
91 stock seems unjust." So at the time of submitting his biennial general message to the 43rd General Assembly of the State, he called attention to the litigation aforesaid, and suggested a modification and amendment of the law to meet fatal defects therein. Thereafter, on February 27, 1907, he sent a special written message to the legislature, in which, among other things, he said in reference to the Act of 1905:

"The statute enacted by the last General Assembly is defective in the penalty clause, which applies only to railroads. The penalty should be made to apply to persons, corporations and partnerships. The cattle clause should be corrected in the light of the testimony adduced in the freight litigation so as to fix these rates at an amount that will stand the test of the judicial crucible."

6. Pursuant to this request and the acknowledgment thus made of the invalidity of the existing law, the enforcement of which was sought to be enjoined by the original bill, the legislature passed an act (herein called the Act of 1907) which will take effect on June 14, 1907, in words and figures as follows:

"Corporations, Private: Railroads—Freight Charges.

An Act to repeal an act of the 43rd general assembly, approved April 15, 1905, entitled 'An act to amend Chapter 12 of the Revised Statutes of Missouri, revision of 1899, entitled "Corporations, private," by repealing section 1194 of said Revised Statutes, being part of article IV of said chapter, concerning railroad classification, charges, commissioners, and to enact in lieu thereof the following new sections providing for the regulation of freight charges by railroads and the recovery of penalties for the violation thereof,' and to repeal an act of the 43rd General Assembly, approved April 14, 1905, entitled 'An act to amend article IV, chapter 12, of the Revised Statutes of Missouri, 1899, entitled "Railroad classifications, charges, commissioners," by adding a new section thereto, to be known as section 1195*a*, fixing the charges for carrying undressed stone, crushed rock and building or paving brick,' and to enact in lieu thereof certain new sections, to be known as sections 1194, 1194*a*-1, 1194*b*-1 and 1194*c*-1, providing for the regulation of freight charges by railroads and prescribing the punishment for a violation thereof, which new sections shall read as follows:

SECTION 1194. Classification and charges for carrying freight in car load lots.
SECTION 1194*a*. Penalty for violation.
SECTION 1194*b*. Not to relieve railroad from complying with other laws.
SECTION 1194*c*. Repealing conflicting acts.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION 1. That sections 1194, 1194*a* and 1194*b* of an act of the 43rd general assembly, approved April 15, 1905, concerning railroad classifications, charges, commissioners, and providing for
92 a penalty for a violation thereof, said sections being enacted in lieu of section 1194, chapter 12 of the Revised Statutes of Missouri, 1899, in "corporations, private," and section 1195*a* of an act of the 43rd general assembly, approved April 14, 1905, concerning railroad classifications, charges, commissioners, fixing charges for carrying undressed stone, crushed rock and building or paving brick, be and the same are hereby repealed, and the following to be known as sections 1194, 1194*a*-1 1194*b*-1 and 1194*c*-1 of said Revised Statutes are enacted in lieu thereof.

SECTION 1194. No individual, company or corporation owning, operating, managing or leasing any railroad, or part of railroad, designated in section 1191 as in classes A, B or C, shall demand, charge or receive a greater or higher rate for carrying from initial to terminal points in this state articles named in the several classes and the commodities herein designated than is hereinafter provided for, namely: Class D, in car loads of 40,000 pounds minimum weight, not exceeding five cents per one hundred pounds for the first twenty-five miles, and not exceeding one-half cent per hundred pounds

for the second twenty-five miles, or fractional part thereof, and not exceeding one-half cent per hundred pounds for each additional twenty-five miles or fractional part thereof. Class E, in car loads of 24,000 pounds minimum weight, not exceeding five cents per one hundred pounds for the first twenty-five miles, and not exceeding one-half cent per hundred pounds for the second twenty-five miles or fractional part thereof, and not exceeding one-half cent per hundred pounds for each additional twenty-five miles or fractional part thereof. Class F, in car loads of 30,000 pounds minimum weight, not exceeding five cents per one hundred pounds for the first twenty-five miles, and not exceeding one-half cent per hundred pounds for the second twenty-five miles or fractional part thereof, and not exceeding one-half cent per hundred pounds for each additional twenty-five miles or fractional part thereof. Class G, in car loads of 30,000 pounds minimum weight, not exceeding five cents per one hundred pounds for the first twenty-five miles, and not exceeding one-half cent per hundred pounds for the second twenty-five miles or fractional part thereof, and not exceeding one-half cent per hundred pounds for each additional twenty-five miles or fractional part thereof. Class H, in car loads, in common cars, measuring inside from 29 feet to and including 30 feet and 6 inches in length (to be known as standard cars), not exceeding $8.00 per car load for the first twenty-five miles, and not exceeding $4.00 per car load for the second twenty-five miles or fractional part thereof, and not exceeding $2.00 per car load for each additional twenty-five miles or fractional part thereof of over twelve miles. For the carriage of any of the articles comprising class H, in cars of other lengths for the distances above specified, the following percentages of the foregoing rates per car load shall not be exceeded, namely: In cars of length less than 29 feet, 94 per cent; in cars of length over 30½ feet to and including 32 feet, 104 per cent; in cars of length over 32 feet to and including 33 feet and 9 inches, 107 per cent; in cars of length over 33 feet and 9 inches to and including 36 feet, 110 per cent; in cars of length over 36 feet to and including 38 feet, 113 per cent; in cars of length over 38 feet to and including 40 feet, 116 per cent; in cars of length over 40 feet to and including 42 feet, 125 per cent; in cars of length over 42 feet to and including 44 feet, 135 per cent; in cars of length over 44 feet, 140 per cent of the rates herein specified for cars of the standard length of 29 feet to and including 30 feet and 6 inches shall not be exceeded. All the foregoing lengths to be taken by inside measurements. Class 1, in car loads of 20,000 pounds minimum weight, not exceeding $14.00 per car load for the first twenty-five miles, and not exceeding $2.00 per car load for the second twenty-five miles or fractional part thereof, and not exceeding $2.00 per car load for each additional twenty-five miles or fractional part thereof. For a car load of 40,000 pounds of minimum weight undressed stone, crushed rock, sand, railroad ties, cordwood, building or
93 paving brick, not exceeding 40 cents per ton of 2,000 pounds to the ton for the first fifty miles or fractional part thereof, and not exceeding five cents per ton per car load for the next ten

miles or fractional part thereof, and not exceeding 5 cents per ton per car load for each additional ten miles or fractional part thereof. In computing the rate of freight, according to the provisions of this article, the distance shall be computed from the point where it is received to the point of destination in the state, notwithstanding it may pass from one road to another.

SECTION 1194*a*. Any individual, company or corporation owning, operating, managing or leasing any railroad, or part of railroad, designated in section 1194, or any officer, agent, representative or employee thereof who violate the provisions of section 1194, shall be adjudged guilty of a misdemeanor and, on conviction, shall be punished by a fine of not to exceed $5,000.00: Provided, that the money received from any fine under the provisions of this act shall be paid into the school fund in the county in which the case is prosecuted.

SECTION 1194*b*. This act shall not have the effect of relieving any person, partnership or corporation, owning or operating any railroad in this state from any liability or penalty heretofore incurred for failure to comply with any law of this state.

SECTION 1194*c*. All acts and parts of acts, and all rules and regulations, freight schedules, classifications and groupings by railroad companies, or the railroad and warehouse commissioners of this state, in conflict with the provisions of this act, are hereby repealed and declared void.

Approved March 19, 1907."

By this act an attempt was made to comply with the request of the Governor and to repeal the said Act of 1905, together with that mentioned in paragraph 3 hereof, with the exception that no penalty or liability incurred should be affected by such repeal, the purpose and intention of defendants being to attempt to enforce against your orator all penalties which accrued if the said acts are held to be illegal.

7. In addition thereto, the legislature in 1907 passed certain acts which will take effect upon June 14, 1907, being in words and figures as follows:

"Corporations, Private: Railroads—Freight Charges.

An Act to Amend Article 4, Chapter 12, Revised Statutes of Missouri of 1899, by Adding a New Section Thereto, to be Known as Section 1195*a*, and Relating to Freight Charges and Classifications.

SECTION 1. Fixing freight charges on fruits.
SECTION 2. Inconsistent acts repealed.
SECTION 3. Penalty for violation.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION 1. That article 4, chapter 12, of the Revised Statutes of Missouri, 1899, entitled 'Railroad classification, charges, commissioners,' be and the same is hereby amended by adding a new section thereto, to be known as section 1195*a*, which said section shall read as follows:

SECTION 1195*a*. No individual, company or corporation owning, operating, managing or leasing any railroad or part of railroad in this state, shall charge for or receive for carrying apples and
94 pears in car loads of 24,00[0] pounds minimum weight, more than six cents per hundred pounds for the first twenty-five miles or fractional part thereof, and not more than one cent per hundred pounds for each additional twenty-five miles or fractional part thereof. For strawberries, peaches, grapes and other berries in car loads of 18,000 pounds mimimum weight, not exceeding fifteen cents per hundred pounds for the first twenty-five miles or fractional part thereof, and not exceeding two cents per hundred pounds for each additional twenty-five miles or fractional part thereof.

SEC. 2. All acts and parts of acts and all rules and regulations, freight schedules, classification[s] and grouping[s] by railroad[s] companies, or the railroad and warehouse commissioners of this state, in conflict with the provisions of this act, are hereby repealed and declared void.

SEC. 3. Any individual company or corporation owning, operating, managing or leasing any railroad or part of a railroad in this state, violating the provisions of this act, shall, on conviction, be adjudged guilty of a misdemeanor, and subject to a fine of not to exceed one thousand dollars for each offense.

Approved March 19, 1907."

"Corporations, Private: Railroads.

An Act to Provide Transportation on Railroads for the Shippers of Freight in this State in Carload Lots.

SECTION 1. Railroads to issue to certain shippers transportation.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION 1. Whenever any railroad company or corporation doing business within the limits of this state shall receive any live stock to be shipped over the said road or roads by carload lots, said corporation shall, in consideration of the price paid for said carload lots, issue to the shipper, his agent or employee, at the time of making out the contract or bill of lading, a round trip ticket to and from said points designated in said bill of lading, without further expense to said shipper, provided that the points of destination are within this state, and in case said point of destination is without this state, then said railroad corporation shall issue to such shipper, his agent or employee, a round trip ticket to a point within this state nearest to the point without this state to which said shipment of live stock is shipped: Provided, that in case said shipper shall ship more than one car load at any one shipment the said railroad corporation shall not be compelled to give to said shipper more than one round trip ticket with such shipment, which said ticket shall be good on the freight train on which said stock is shipped, and on all trains on said road carrying passengers on the return trip, and shall be good for a period of ten days, and any railroad company or corporation will-

fully violating the provisions of this section, or which shall fail, neglect or refuse to furnish and deliver such ticket to such shipper, his agent or employee, shall forfeit and pay, as a penalty, to said shipper, not less than three hundred dollars nor more than five hundred dollars, to be recovered by civil action in any court of competent jurisdiction.

Approved April 4, 1907."

8. All the averments of the original bill apply to the said Act of 1907 and also to each of the acts mentioned in paragraph 7 hereof, except that if for the classes of freight mentioned in the said
95 Acts of 1907 alone, or in all the Acts of 1907, your orator should charge the maximum rate therein authorized and practically capable of being charged, its total gross receipts from state traffic would be reduced in a very large sum, which though differing in items would not be as a whole substantially less than that mentioned in the original bill as to the Act of 1905. Each of said freight Acts of 1907 is violative of the provisions of the constitution to the same extent as was alleged as to the Act of 1905. But the freight Acts of 1907 did not so correct the evils of the former laws as set forth in the original bill, and the rates were thereby fixed at amounts that were unreasonable, and confiscatory, and less than the cost of the service.

9. The Governor in calling for the passage of said Act of 1907, and the legislature in passing the same, did so for the avowed purpose of increasing certain of the maximum rates of the Act of 1905 which they conceived had in this litigation been proved to be unreasonable and confiscatory and could not be enforced. Notwithstanding this, the rates as finally so fixed, considered alone, were not upon such a basis as would return any reasonable or fair compensation to the complainant upon the value of that portion of its property devoted to such use. Even if the laws in existence in 1905 relative to passenger fares, had remained in force, still the freight rates as fixed by the said Acts of 1907 would have been unreasonable and confiscatory, and would not have given any just return upon the value of that portion of your orator's property as a whole devoted to state traffic. However, the legislature of the state, without any fixed or definite knowledge upon the subject of rates, erroneously conceived that if the increase as aforesaid in the freight rates were necessary and were made, there could be a general equalization of rates by a decrease in the passenger rates and so in substance they could legally overcome and offset any advantage from the increase in freight rates by decreasing the maximum rates to be charged for state pas-
96 senger traffic about thirty-three and one-third per cent, and thus, while defeating pending litigation, the public as a whole would not be the loser. The result was that at the same session, and as part and parcel of one transaction, and substantially as one law, and to accomplish such purpose, there was passed and the Governor approved, an act herein called the "Passenger Act," which, if valid, will take effect on June 14, 1907. The same reads as follows:

"Corporations, Private: Railroads—Passenger Rates.

An Act to repeal section 1191 and 1192 of chapter 12, article 4, Revised Statutes of Missouri, 1899, entitled 'Railroad classification—charges—commissioners,' by striking out sections 1191 and 1192 and enacting the following new sections in lieu thereof, to be known as sections 1191 and 1192 and 1192*a*.

SECTION 1191. Classification of railroads.
SECTION 1192. Passenger charges regulated.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION 1. That all of sections 1191 and 1192 of chapter 12, article 4 of the Revised Statutes of Missouri, 1899, be and the same are hereby repealed and three new sections be enacted in lieu therof, to be known as sections 1191 and 1192 and 1192*a*, so that said sections shall read as follows:

SECTION 1191. Roads classified.—All railroads in the state of Missouri are hereby divided into four classes, to be known as class A, class B, class C and class D. Class A shall include all through or trunk line railroads and all branch roads owned, leased, controlled or occupied by such through or trunk line railroad companies or corporations. Class B shall include all other railroads or parts of railroads owned, leased, controlled or occupied, or which may hereafter be owned, leased, controlled or occupied, either wholly or in part, by any trunk line company or corporation. Class C shall include all other railroads of a greater length than forty-five miles. Class D shall include all roads less than forty-five miles in length not owned, leased, controlled or occupied by any trunk line company or corporation.

SECTION 1192. Passenger charges regulated.—Any individual, company or corporation owning, operating, controlling or leasing any railroad or part of a railroad in this state, in the several classifications as herein prescribed, shall be limited to a compensation per mile, for the transportation of any person with ordinary baggage not exceeding one hundred pounds in weight, as follows: In classes A, B and C, not exceeding two cents per mile, and in class D, not exceeding four cents per mile: Provided, that no such individual, company or corporation shall charge, demand or receive any greater compensation per mile for the transportation of children of the age of twelve years or under than one-half of the rate above prescribed; and provided further, that the rates for transportation herein prescribed may be reduced, as hereinafter provided.

SECTION 1192*a*. Any individual, company or corporation, or any agent or officer thereof, who shall violate any of the provisions of section 1192 of this act, shall be deemed guilty of a misdemeanor, and upon conviction, shall pay a fine of not less than one hundred nor more than five hundred dollars.

Approved February 27, 1907."

10. All the averments of the original bill apply to said Passenger Act. It is violative of each constitutional provision men-
97 tioned, and subject to each objection made, in the original bill to the Act of 1905, and all the facts there averred as to why the Act of 1905 should be held to be void and action thereunder restrained, are not only true as to the Acts of 1907 but also as to said Passenger Act. If enforced, it will reduce the earnings of your orator from said passenger business in the practical and ordinary operation of its road, substantially one-third. The state passenger earnings for the year 1906 were in the aggregate substantially sixty-four thousand one hundred and thirty-five dollars, and yet, if the Passenger Act as aforesaid had been applied thereto, said earnings would have been reduced at least to the sum of forty-two thousand seven hundred fifty dollars, or an annual loss of twenty-one thousand three hundred dollars. The property of your orator in the state is used as a whole both for state and interstate freight and passenger business, and, as such, is quite valuable. The value of that portion devoted to the carriage of state business, considered as a whole, or separately as to the passenger business only, is such that in either case the reduction in rates by said Passenger Act would not only fail to make any reasonable return on such valuation, but would cause such business to be done at an actual loss.

11. The said Passenger Act was passed for the avowed purpose of reducing the state passenger rates of your orator so as to offset and overcome a supposed increase of certain of the state freight rates made under the Act of 1907, and the attempt was made to frame each act so as to avoid the injunctive relief in this and in each action heretofore instituted by the other railroad companies operating lines in Missouri. As your orator is informed and believes, the state and defendants now unjustly and improperly claim that since upon the face of these acts provision is only made for general penalties, there is no remedy by injunction; that the original bill can no longer be maintained, and that the state through its officers is entitled to have
98 enforced the various statutory penalties for each shipment made and each passenger carried at a rate in excess of that fixed by the freight Acts of 1907 and the said Passenger Act, as well as penalties under the abandoned Act of 1905.

As to the said contentions, your orator respectfully submits:

(*a*) Such view, if adopted, would result in a multiplicity of suits, the harassment of your orator, and tedious and expensive litigation, because if an injunction be not herein granted, and said acts be not complied with, many suits and prosecutions will be brought and many fines and penalties imposed and no opportunity will be afforded to your orator to present its claim of the unconstitutionality of said act and the confiscatory nature of the rates fixed. Such an inquiry involves the examination of long and tedious accounts, the study of books and papers and an expert knowledge of the trier of fact, none of which could be properly had in the many trials to be had in a court of law to enforce the penalties. Hence the result would be pending the inquiry, your orator would be required to put in and enforce said rates to its irreparable damage, because it would be

compelled, pending the litigation, to carry traffic at the reduced rates with no practicable way of recovering the difference between the rates now charged and as so reduced.

(*b*) The real purpose of the original bill was to determine whether that portion of the property of your orator devoted to state business could, if the Act of 1907 were enforced, receive such return upon its value as would be fair, reasonable and not confiscatory. Upon the trial of the three cases heard by the special master, such was the theory adopted by both parties, and the proofs were by both of them directed to that end. In view of this situation, it is respectfully submitted that the full determination of all questions of rates in the pending cases can not be defeated or impaired by the repeal by the state legislature of the particular act questioned by the original bill and the passage of another and different act in such form as
99 to prevent any adequate relief from a court of equity and to remit a complainant to a defense in numberless actions of law to recover penalties. But if the rights of the parties should be ascertained by a court of equity, this can be done adequately through the injunctive process, surrounded and controlled by such conditions as may be proper and just in the premises.

(*c*) It would be unjust and inequitable to permit officers of the state to claim that the validity of an act alleged to be confiscatory in its nature should be determined in a way other than would afford a full and fair hearing, which can only be by the processes of a court of equity. In order that there may be the fullest and fairest hearing of the controversy, your orator consents that any state officer, or any private person or corporation may appear herein and show, if they can, why the rates fixed in the acts aforesaid are lawful, reasonable or enforcible, and that the court may make any reasonable order to protect the public and speed the hearing.

(*d*) Each of the special duties devolving upon the members of the Board of Railroad Commissioners and the Attorney General, as stated in the original bill, applies to the Acts of 1907 and the Passenger Act aforesaid, so that even as an original bill, this proceeding could be maintained.

(*e*) The constitution of the state provides that all penalties such as are attempted to be prescribed for the violation of the acts herein mentioned go to the school-fund of the various counties, and the statutes of the state impose the special duty of collecting the same and preserving and investing the proceeds thereof, upon the county court and the treasurers of the respective counties of the state, Joseph M. Patterson, Charles E. Moss and George Dodd are the judges of the county, and Arthur C. Warner is treasurer, and each is a resident and citizen of the county of Jackson, Missouri through which the
100 line of your orator passes, and from and to which there is transported a very large part of the state and passenger traffic, the maximum rates for carriage of which are fixed by said Acts of 1907 and said Passenger Act. Each of said judges and said treasurer is hereby made a defendant. Each proposes and intends and will, unless restrained herein, seek to enforce and collect the penalties provided for in the said acts. In view of the fact that the line of your

orator's road is not confined to one county, it is inconvenient, impracticable, expensive, and hence, unnecessary to make the county judges and the treasurer of each county parties hereto, but such as are named can be, and are sued as a class so that others similarly situated may, if they desire, appear herein and be heard upon their own behalf or through those now made parties, or, if necessary, be brought in by process of court and required to make defense.

(f) Thomas P. Gordon and Albert J. Brunswig are citizens and residents of Buchanan county, Missouri, who constantly travel over your orator's road, who have demanded and supported the passage of the Passenger Act aforesaid, and threaten to and will seek to enforce its provisions unless the rates therein fixed are established and put in force. They are hereby made defendants, and they represent a class of passengers and travelers so numerous that it is impracticable to join them all, and those named are made defendants herein for the purpose of determining, as against your orator, the rights of the entire traveling public under the said Passenger Act.

12. The rates fixed by each the said Acts of 1907 and said Passenger Act and as a whole are so unreasonable and confiscatory that a compliance therewith will force an unreasonable reduction and confiscation of your orator's entire revenue contrary to the provisions of the fourteenth amendment to the constitution of the United
101 States and provisions of the constitution. Besides this, to enforce the rates so fixed in any of said acts would necessarily affect the interstate rates upon the same commodities. Owing to the peculiar geographical location of the state of Missouri, the state rates necessarily affect all interstate rates upon the same commodities and travel and this results as a practical and unavoidable matter in the conduct of business affairs, the location of markets, business houses, the extent of territorial distribution from the various cities in the state and the necessities of travel. In addition to this some of the chief lines of railroad in Missouri, in running to and from points therein, pass out of the state so as to make any transportation between such points interstate commerce. Hence when a state rate between such points when lines wholly within the state is fixed lower than the interstate rate the companies whose transportation is interstate must meet that rate or carry none of the traffic. Such traffic constitutes a very substantial portion of the entire state traffic. Congress has attempted to legislate upon the subject of interstate rates, and since, as a matter of fact, none of said state rates can be enforced without affecting interstate rates, all of the said legislative acts are unconstitutional and void and of no effect and violative of section 8, article 1 of the Constitution of the United States.

In consideration whereof, and forasmuch as your orator is remediless in the premises and by the strict rules of the common law can only have relief in a court of equity where matters of this kind are properly cognizable and relievable, your orator prays that: (1) Each of said Acts of the Legislature of Missouri of 1907, herein set forth, including said Passenger Act, be declared unconstitutional, unenforcible and not binding upon your orator. (2) All the relief asked in the original bill as to the Act of 1905 be granted as to the said Acts

of 1907. (3) The temporary injunction heretofore issued herein be extended against the defendants to the original and to this
102 bill so as to cover and include any claim or right under or by virtue of any of said freight Acts of 1907 and said Passenger Act and be made permanent. (4) Your orator have such other and further relief as is just and equitable.

And may it please your Honors to grant unto your orator a writ of subpœna of the United States, issuing out of and under the seal of this honorable court, directed to each of the said defendants, including each of those hereby and herein made a party defendant, commanding them and each of them on a day certain therein to be named and under a certain penalty, to be and appear before this honorable court then and there to answer, but not under oath, an answer under oath being expressly waived, all and singular the premises and to stand to, perform and abide by such order, direction and decree as may be made against them in the premises.

And your orator will ever pray, etc.

R. A. BROWN,
Solicitor for Complainant.

FRANK HAGERMAN,
Of Counsel.

STATE OF MISSOURI,
County of Buchanan, ss:

I, J. Berlingett, upon oath, say that I am General Superintendent of complainant in above entitled bill, and as such am familiar with the traffic operations of said company, and all the matters and things mentioned in the said bill which I have read. I know the contents thereof and same are true of my own knowledge, except as to those matters therein stated upon information and belief, and as to those matters, I believe them to be true.

J. BERLINGETT.

Subscribed and sworn to before me this 11th day of June, 1907. My commission expires June 20th, 1908.

FRANCIS W. RUSSELL.
[SEAL.] *Notary Public.*

Afterwards, to wit, on the 25th day of June 1907, a writ of subpœna was issued.

103 Afterwards, to-wit, on the 15th day of July, 1907, the following order was filed and entered of record:—

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 3001.

ST. JOSEPH & GRAND ISLAND RAILWAY COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendants.

Order.

This cause coming on for hearing this July 15th, 1907, leave is hereby given to complainant to file an Amendment to Complainant's Bill of Complaint. The application for a temporary injunction against Herbert S. Hadley, Attorney General of the State of Missouri, from prosecuting the suit in the state court which he has instituted against the complainant is continued until the expiration of the ninety days' test heretofore ordered, unless the court should hereafter set the same down for hearing at an earlier date.

(Signed) SMITH McPHERSON, *Judge.*

104 Afterwards, towit, on the 16th day of July, A. D. 1907, an amendment to complainant's bill of complaint was filed. Said amendment is in words and figures as follows:—

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 3001.

THE ST. JOSEPH AND GRAND ISLAND RAILWAY COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendants.

Amendment to Complainant's Bill of Complaint.

The complainant, by leave of court, presents this its amendment to the bills heretofore filed herein, and respectfully shows to the court that it desires to, and does hereby present the matters and things hereinafter set forth, as paragraphs 13, 14, 15, 16, 17, 18, 19, 20 and 21, of the amended and supplemental bill heretofore filed herein, to be inserted therein immediately following paragraph 12 and preceding the prayer thereof. Thereupon complainant avers:

13. It hereby refers to the original and to the amended and supplemental bills herein, with the same force and effect as if copied herein.

14. Conceiving, and the defendants insisting, that an additional amended and supplemental bill should only be filed after notice, and upon order of court, and there being no judge of the court within the district at the time, the complainant filed herein, on June 11th, 1907, its written application for leave to file an amended and supplemental bill, reference to which application is made the
105 same as if copied herein. On the same day, there was served upon counsel for defendants in the original bill, and accepted by them, a written notice, together with a copy of the form of the said amended and supplemental bill, which notice recited that the application to file same, and for a temporary injunction would be presented to the court upon June 14, 1907, at the opening of the court at ten o'clock a. m. Said notice, the acceptance and evidence of service thereof, and form of bill, are upon file and are hereby referred to with the same force and effect as if set out herein. On June 13, 1907, at ten o'clock a. m., there then being a judge of the court within this district, and court being open, complainant presented and asked, pending a hearing of the application to file its amended and supplemental bill the general form of which was then submitted to the court, the right to temporarily file same, and for a restraining order, whereupon the court made an order entered herein upon June 13, 1907, of its own motion in the interests of the public and of all parties, maintaining the status quo pending the hearing and restraining complainant from putting in force the maximum freight and passenger rates provided by the legislative acts of 1907 mentioned in said bill, and from complying with said acts, reference to said order is now made as fully as if copied herein.

15. Afterwards, on June 14, 1907, Herbert S. Hadley, Attorney General of the State of Missouri, and one of the defendants herein, by his counsel, in flagrant disregard and contempt of the jurisdiction of this court, filed in the circuit court of Kansas City, Missouri, his two petitions in equity in the name of the state at his relation as Attorney General, against this complainant, one asking that the court by mandatory injunction require complainant to put in force the maximum freight rates provided by the said legislative acts of 1907 mentioned in the amended and supplemental bill, and to comply with said acts, and the other as asking the same relief as to the rates fixed by the Passenger Act of 1907. And at his solicitation,
106 the judge of said state court did, in each of said cases, of the same day, without notice, issue its restraining order returnable upon the 18th day of June, 1907, requiring the forthwith doing of such acts by this complainant.

Complainant asks leave to produce upon the hearing of this petition, certified copies of said proceedings in the state court, and refer to them as fully as if copied herein.

16. Thereafter at the time fixed in said notice, and upon June 14, 1907, at ten o'clock a. m., there was presented to this court the applications of complainant for leave to file said amended and supplemental bill and for a temporary injunction, and defendants asked a continuance of the hearing for one day, which the court granted, and upon its own motion ordered that said amended and supplemental

bill should be deposited with the clerk (which was then and there done), that in the interest of the public and all parties the status quo should be maintained, and that complainant in the meantime and until the further order of court should be restrained from putting in force the maximum freig[illegible]d passenger rates fixed by the legislative acts of 1907 mentioned in the said bill, and from complying with said acts. A reference to the said order is now made with the same force and effect as if copied herein. In the meantime the said restraining orders from the state court were served upon complainant. Thereafter, upon June 15, 1907, the said applications were by the counsel for the respective parties and by this court, taken under advisement.

17. Thereafter upon June 17, 1907, this court made and entered an order which, omitting title, is in words and figures as follows:

Order.

"This cause came on for hearing this 17th day of June, 1907, the parties appearing by their counsel in response to notice, and the court being fully advised in the premises, orders and adjudges:

1. Complainant's motion for leave to file an amended and supplemental bill is sustained and such leave is given, the same to be filed as of June 11th, 1907.

Upon such filing process shall be issued so that if the
107 court hereafter decides that the ends of justice require, and the rules of equity permit, the said bill may be treated as an amended, supplemental, ancillary, dependent or original bill.

To said bill, each of the parties named therein shall be and is hereby made a party.

2. Complainant's application for a temporary injunction is, as to the maximum freight laws of 1907, sustained. Until the further order of the court herein, the defendants and each of them are enjoined from doing any act, attempting to recover any penalty, seeking to enforce or having enforced, or asserting any claim or right under or by virtue of either of the maximum freight rate acts of 1907 mentioned in said amended and supplemental bill, to the end that each defendant as to each of said acts of 1907 be restrained as effectually as the defendants were enjoined by the temporary injunction heretofore issued as to and in connection with the act of 1905. By consent of the complainant, the injunction bond heretofore filed shall stand as applicable to this order, the same as if it were executed and filed this day.

3. As to the passenger act of 1907, the order heretofore entered upon the court's own motion shall remain in force until June 19th, 1907, at 6 o'clock a. m., at which time the rates fixed by said act shall be put and kept in force for three months without prejudice to the rights of either party for the purpose of ascertaining more definitely the extent that experience will show that the rates under said act reduce or increase the earnings of complainant.

The court reserves the power, upon the application of any person

interested, to hereafter make such further or other order upon this subject as it deems proper.

4. Pending the further hearing and final determination of this case, the complainant shall preserve and keep in existence its way-bills for state freight.

SMITH McPHERSON, *Judge.*

Accordingly said bills were forthwith marked filed as of June 11, 1907, as in and by said order provided. Subpœnas have been duly issued as in and by said order provided, and served upon most of the defendants, and as to the others are in the marshal's hands for service and not yet returned, and complainant is not yet advised as to whether actual personal service has been had.

18. Thereafter upon June 18, 1907, the circuit court of Jackson County, Missouri, upon the application of the said Attorney General entered an order dismissing the case mentioned in paragraph 15 hereof which was filed against this complainant for a mandatory injunction to require it to put in force the maximum freight rates provided by the said legislative acts of 1907, and upon the same day the same court, upon the application of the said Attorney General, entered an order setting aside the restraining order issued in the case mentioned in the same paragraph to require it to put in force
108 the maximum passenger rates fixed by the legislative act of 1907 aforesaid, but did not dismiss the case, the Attorney General insisting that it should remain pending. He now threatens to and he will, unless enjoined herein, proceed with the trial and prosecution of the same on and after September 20, 1907, at the expiration of the ninety day test mentioned in the order hereinbefore set out.

19. The said state court has no jurisdiction in the premises and has no right or power to compel complainant by injunction to put in force the maximum passenger rates aforesaid, and any attempt so to do would deny to complainant the protection accorded to it by the fourteenth amendment to the constitution of the United States, which it now claims. Such attempt to oust this court of its jurisdiction, is in contempt thereof, and as to it was and is futile.

20. With the exception hereinafter stated, the facts alleged herein in paragraphs 13 to 18 inclusive, are true as to each of the following railway companies in the state of Missouri; St. Louis & San Francisco, Atchison, Topeka & Santa Fe, St. Louis Southwestern; Chicago, Rock Island & Pacific; St. Louis, Kansas City & Colorado; Kansas City Southern; St. Louis & Hannibal; Missouri Pacific; St. Louis Iron Mountain & Southern; Missouri, Kansas & Texas; Chicago, Burlington & Quincy; Quincy, Omaha & Kansas City; Wabash; St. Joseph & Grand Island; Kansas City, Clinton & Springfield; Chicago Great Western; Chicago, Milwaukee & St. Paul, and Chicago & Alton. Each of said companies had at the same time filed in this court bills similar in nature to the original bill herein to enjoin the enforcement of the Acts of 1905, in which temporary injunctions had been issued and which cases are still pending and undetermined. Said exception is that the cases in the state court mentioned in paragraph

15 hereof against the St. Louis & San Francisco Railroad Company; St. Louis Southwestern Railway Company; St. Louis, Kansas City & Colorado Railway Company; St. Louis & Hannibal Railway Company; Missouri Pacific Railway Company; St. Louis Iron Mountain & Southern Railway Company; Missouri, Kansas & Texas
109 Railway Company and the Wabash Railroad Company, were filed in the circuit court of St. Louis, Missouri, while those against the other companies were filed in the circuit court of Jackson County, Missouri, at Kansas City. With this exception, similar action to that herein averred was taken in each case pending in this court, and the Attorney General threatens to and unless restrained will, proceed to prosecute each of said cases in the state courts as hereinbefore alleged. As to several of said complainants, the restraining orders from the state courts were served while the parties were presenting said applications upon June 14.

21. The passenger act of 1907, and each freight act of 1907, is void and of no effect for that it is an attempt to deprive complainant of its property without due process of law, and denies to complainant the equal protection of the law for reasons additional to those heretofore given, in that:

(*a*) Harsh and unreasonable penalties are provided with no provision for a test of the validity of the act, except at the risk of incurring such penalties which, if applied to each shipment of state freight or each passenger traveling on a state journey, over complainant's line, would within two years be greater than the value of complainant's whole property devoted to such use.

(*b*) It directly influences, affects and bears upon interstate freight and passenger traffic and fixes and regulates the same, for these reasons additional to those heretofore given:

(1) Many of the companies operate lines between the large cities of the state, some of which are wholly within the state and some of which go out of the state into Kansas and then back into this state. For illustration: The Kansas City, Clinton & Springfield Railway Company and the St. Louis & San Francisco Railroad Company are trunk lines between Kansas City, Missouri, and Springfield, Missouri, of substantially the same length; the line of the former be-
110 tween those points extending into and out of Kansas, so that all its carriage between said points is interstate; the other company has one line which in said course runs into and out of a portion of Kansas, and another separate line between said points which extends wholly through Missouri so that the carriage between said points upon one line is interstate and upon the other, state. Between Joplin and Kansas City there are three trunk lines of substantially the same length, that of the Missouri Pacific Railway Company between said points being wholly within the state and therefore all of its traffic is state, while the lines of the Kansas City Southern Railway Company and the St. Louis & San Francisco Railroad Company between said points extend into and out of Kansas, so that all the traffic between said points is interstate. Between St. Louis, Missouri, and St. Joseph, Missouri, there are two trunk lines, one of which is that of the Chicago, Burlington & Quincy Railway Company, which

does not pass out of the state, so that the traffic between said points upon that line is wholly state, the other line is that of the Missouri Pacific Railway Company which in its course passes into and out of Kansas, so that the entire traffic between said points is interstate. Between Kansas City, Missouri, and St. Joseph, Missouri, there are four trunk lines of substantially equal length, those of the Chicago, Burlington & Quincy Railway Company and the St. Joseph & Grand Island Railway Company are wholly within Missouri and all their traffic between said points is state; the lines of the Missouri Pacific Railway Company and of the Chicago Great Western Railway Company pass into and out of Kansas, so that the entire traffic thereon between said points is wholly interstate.

The said five cities are the largest in the state, their populations, according to the census of 1900 being, St. Louis, 575,238; Kansas City, 163,752; St. Joseph, 102,979; Joplin, 26,023; Springfield, 23,267.

The traffic between said cities upon said lines is a very sub-
111 stantial part of the traffic of said lines and of the state; the rates between the points as aforesaid, both for passenger and freight, upon those lines which are interstate, have been for years fixed at a reasonable sum which is much higher than the rates fixed by any of the acts of the legislature in question. If any of the rates mentioned in said acts be put in force between said points upon lines wholly within the state, each of the companies operating the lines which are interstate will necessarily be compelled to lower their rates to the same figure or else, as a matter of fact, none of the traffic between said points will be carried over its line.

(3) The large cities and populous communities of the state are upon its eastern and western borders; the main course of traffic through the state is east and west; all the railroads in the state either operate lines extending into other states, or into the state of Kansas adjoining Missouri upon the west, and Illinois adjoining it upon the east, or else have joint freight and passenger traffic arrangements with lines running into those states for interstate through carriage both of freight and passengers.

So far, pending the test of the passenger rate ordered by this court, it has been demonstrated and is the fact, that the interstate passenger rates are much higher than those fixed by the passenger act of 1907, so that passengers starting from points in Missouri to go to other states buy tickets at two cents a mile to the last station in Missouri upon its border, and then buy tickets or pay fare from thence to their interstate destination, and vice versa from points of interstate trip into Missouri. For illustration a concrete case may be stated. From St. Louis to Kansas City is about 275 miles, thence to Topeka, Kansas, 67 miles, or a total of about 342 miles. The fair and reasonable interstate rate is and has for years been $9.50. A passenger starting from St. Louis may and does, buy his ticket to Kansas City, 275 miles at two cents a mile, or $5.50; he then buys his ticket to Topeka, 67 miles, at three cents a mile or $2.00, making a total

from St. Louis to Topeka of $7.50, thus saving to himself and
112 losing to the carrier the difference between $9.50 and $7.50, or $2.00. This illustrates the situation upon other lines in

the state, so that as a matter of fact it is true that in a state located as the state of Missouri is, the lowering of the rate upon the state traffic below that of the interstate necessarily affects, fixes and lowers the interstate rate in the manner herein stated. The same thing is true of the freight traffic (though not in this respect in as pointed a degree), because the same practice can, is and will be adopted as to freight.

Wherefore, complainant prays, as heretofore prayed, and asks that the defendants be required to also answer this amendment, but an answer under oath is waived, and in addition to the relief heretofore asked, complainant asks that Herbert S. Hadley, Attorney General of the State of Missouri, be temporarily and permanently enjoined from prosecuting the said suit in the state court which he has instituted against the complainant.

And your orator will ever pray, etc.

R. A. BROWN,
Solicitor for Complainant.

FRANK HAGERMAN,
Of Counsel.

STATE OF MISSOURI,
County of Buchanan, ss:

I, J. Berlingett, upon oath say that I am General Superintendent of complainant in the above entitled cause, and as such am familiar with the traffic questions of said company, and all the matters and things mentioned in said amendment which I have read; I know the contents thereof and the same are true of my own knowledge, except as to those stated upon information and belief, and as to those matters, I believe them to be true.

J. BERLINGETT.

Subscribed and sworn to before me this first day of July, 1907. My commission expires June 20th, 1908.

[SEAL.] FRANCIS J. RUSSELL,
Notary Public.

113 Afterwards, to-wit, on the 16th day of July, 1907, the Acknowledgment of service of subpœna by Wyeth Hardware and Manufacturing Company was filed. Said Acknowledgment is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 3001.

ST. JOSEPH & GRAND ISLAND RAILWAY COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendants.

Acknowledgment of Service of Subpœna.

Service of the subpœna issued herein upon June 25, 1907, is acknowledged with the same force and effect and no more than if served by the proper officer.

WYETH HDW. & MFG. CO.,
H. WYETH, *Pres.*
JONES-PAYNE HAT CO.,
By MINITRY JONES, *Pres't.*

114 Afterwards, to-wit, on the 16 day of July, 1907, the Acknowledgment of service of subpœna by Railroad Commissioners, et al. was filed. Said Acknwledgment is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 3001.

ST. JOSEPH & GRAND ISLAND RAILWAY COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendants.

Acknowledgment of Service of Subpœna.

Service of the subpœna issued herein upon June 25, 1907, is acknowledged with the same force and effect and no more than if served by the proper officer.

HERBERT S. HADLEY,
Attorney General; Solicitor for Railroad Commissioners Including H. R. Oglesby, Herbert S. Hadley, Attorney General.

115 Afterwards, to-wit, on the 16 day of July, 1907 the Acknowledgment of service of subpœna by Albert J. Brunswig, et al. was filed. Said Acknowledgment is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 3001.

ST. JOSEPH & GRAND ISLAND RAILWAY COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendants.

Acknowledgment of Service of Subpœna.

Service of the subpœna issued herein upon June 25, 1907, is acknowledged with the same force and effect and no more than if served by the proper officer.

ALBERT J. BRUNSWIG.
T. P. GORDON.

116 Afterwards, to-wit, on the 31 day of July, 1907, the Acknowledgment of service of subpœna by Joseph M. Patterson, et al. was filed. Said Acknowledgment is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 3001.

ST. JOSEPH & GRAND ISLAND RAILWAY COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendants.

Acknowledgment of Service of Subpœna.

Service of the subpœna issued herein upon June 25, 1907, is acknowledged with the same force and effect and no more than if served by the proper officer.

CHARLES W. GERMAN,
County Counselor; Solicitors for Joseph M. Patterson, Charles E. Moss and George Dodd, County Judges of Jackson Co., Mo., and Arthur C. Warner, County Treasurer of Jackson Co., Mo.

117 Afterwards, to-wit, on the 2nd day of August A. D. 1907, the joint demurrer of John A. Knott, et al., was filed. Said demurrer is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 3001.

THE ST. JOSEPH AND GRAND ISLAND RAILWAY COMPANY, Complainant,

vs.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendants.

The Joint Demurrer of the Above-named Defendants, John A. Knott, Frank Wightman and H. R. Oglesby, Railroad Commissioners of the State of Missouri, to the Amended and Supplemental Bill of Complaint, as Amended.

First. These defendants, by protestation, not confessing or acknowledging all or any of the matters and things in the complainant's amended and supplemental bill of complaint as amended to be true in manner and form as the same are therein and thereby set forth and alleged, doth demur thereto and for cause of demurrer show:

1. That the said complainant has not, in and by said amended and supplemental bill of complaint, as amended, made or stated any such cause as ought to entitle it to the relief thereby sought and prayed for, from or against these defendants, or to any relief whatsoever.

2. It appears upon the face of complainant's amended and supplemental bill of complaint as amended that the complainant has an adequate remedy at law.

3. The matters and things set forth in complainant's amended and supplemental bill of complaint, as amended, are not nor are any of them germane to or supplementary of the original bill in this case.

118 4. If the matters and things set forth in complainant's amended and supplemental bill of complaint, as amended, entitle the complainant to any relief whatsoever, they constitute a new, original and independent cause of action, not connected with or dependent upon the cause of action set forth in the original bill.

Second. These defendants further demur to the fifth, sixth, seventh and eighth paragraphs of the complainant's amended and supplemental bill of complaint, as amended, because (*a*) the same are not germane to or supplementary of the original bill herein; (*b*) if the matters and things set forth in said paragraphs entitle the complainant to any relief whatsoever, they constitute a new, original and independent cause of action not connected with or dependent upon the cause of action set forth in the original bill; (*c*) the matters and things set forth in said paragraphs do not entitle complainant to the relief prayed for, or to any relief whatsoever.

Third. These defendants further demur to the ninth and tenth paragraphs of the complainant's amended and supplemental bill

of complaint, as amended, because (*a*) the matters and things set forth in said paragraphs are not germane to or supplementary of the original bill herein; (*b*) if the matters and things set forth in said paragraphs entitle the complainant to any relief whatsoever, they constitute a new, original and independent cause of action not connected with or dependent upon the cause of action set forth in the original bill; (*c*) the matters and things set forth in said paragraphs do not entitle the complainant to the relief prayed for, or to any relief whatsoever.

Fourth. These defendants further demur to the eleventh and twelfth paragraphs of the complainant's amended and supplemental bill of complaint, as amended, because (*a*) the matters and things set forth in said paragraphs are not germane to or supplementary of the original bill herein; (*b*) if the matters and things set
119 forth in said paragraphs entitle the complainant to any relief whatsoever, they constitute a new, original and independent cause of action, not connected with or dependent upon the cause of action set forth in the original bill; (*c*) the matters and things set forth in said paragraphs do not entitle the complain-t to the relief prayed for, or to any relief whatsoever.

Fifth. These defendants further demur to the fourteenth, fifteenth, sixteenth, seventeenth, eighteenth and nineteenth paragraphs of the complainant's amended and supplemental bill of complaint, as amended, because (*a*) the matters and things set forth in said paragraphs are not germane to or supplementary of the original bill herein; (*b*) if the matters and things set forth in said paragraphs entitle the complainant to any relief whatsoever, they constitute a new, original and independent cause of action, not connected with or dependent upon the cause of action set forth in the original bill; (*c*) the matters and things set forth in said paragraphs do not entitle the complainant to the relief prayed for or to any relief whatever; (*d*) it appears from said paragraphs that the State Circuit Court of Kansas City, Missouri, has jurisdiction of the suit against the complainant pending therein and mentioned in said paragraphs; (*e*) the State of Missouri had a lawful right to institute said suit in said State court, and said State court had a lawful right to entertain jurisdiction of the same; (*f*) the said Attorney General had a lawful right and the authority to institute the suit referred to in said paragraphs against the complainant, in the State Circuit Court at Kansas City, Missouri, and he has the lawful right and authority to proceed with and prosecute the same to a conclusion; (*g*) if the complainant is aggrieved by the suit against it in the State Circuit Court mentioned in said paragraphs, it has an adequate remedy by making its defense (if any it have) to the same, in said State court.

Sixth. These defendants further demur to the twentieth paragraph of complainant's amended and supplemental bill of complaint, as amended, because (*a*) the matters and things set
120 forth in said paragraph are not germane to or supplementary of the original bill herein; (*b*) if the matters and things set forth in said paragraph entitle the complainant to any relief whatsoever, they constitute a new, original and independent cause

of action, not connected with or dependent upon the cause of action set forth in the original bill; (*c*) the matters and things set forth in said paragraph do not entitle the complainant to the relief prayed for or to any relief whatsoever; (*d*) it appears from said paragraph that the Circuit Court of Jackson County, Missouri, and the Circuit Court at St. Louis, Missouri, have jurisdiction, respectively, of the suits against the complainant and other railway companies mentioned in said paragraph; (*e*) the State of Missouri had a lawful right to institute the suits mentioned in said paragraph, and said State courts had a lawful right to entertain jurisdiction of the same; (*f*) the said Attorney General had a lawful right and the authority to institute in said State Circuit Courts the suits against the complainant and the other railway companies mentioned in said twentieth paragraph, and he has the lawful right and authority to proceed with and prosecute the same to a conclusion; (*g*) if the complainant or any of said other railway companies are aggrieved by the suits in said State Circuit Courts mentioned in said twentieth paragraph, they have an adequate remedy by making their defense (if any they have) to the same, in said State courts.

Seventh. These defendants further demur to the twenty-first paragraph of complainant's amended and supplemental bill of complaint, as amended, because (*a*) the matters and things set forth in said paragraph are not germane to or supplementary of the original bill herein; (*b*) if the matters and things set forth in said paragraph entitle the complainant to any relief whatsoever, they constitute a new, original and independent cause of action, not connected with or dependent upon the cause of action set forth in the original bill; (*c*) the matters and things set forth in said paragraph do not entitle the complainant to the relief prayed for or to any relief whatever.

Wherefore, and for divers other good causes of demurrer
121 appearing in complainant's amended and supplemental bill of complaint, as amended, and in paragraphs thereof specifically mentioned in the foregoing demurrers, numbered second, third, fourth, fifth, sixth and seventh, respectively, these defendants demur thereto and humbly demand the judgment of this court whether they shall be compelled to make any further or other answer to said amended and supplemental bill of complaint as amended, or to the said paragraphs hereinbefore specifically mentioned, or any of them, and pray to be hence dismissed with their costs and charges in this behalf most wrongfully sustained.

HERBERT S. HADLEY,
Attorney General;
JOHN KENNISH,
FREDERICK W. LEHMANN,
SANFORD B. LADD,
Solicitors for Defendants.

FREDERICK W. LEHMANN,
SANFORD B. LADD,
Of Counsel.

I hereby certify that the foregoing demurrer is, in my opinion, well founded in point of law.

SANFORD B. LADD,
Of Counsel for Defendants.

The affidavit required by Equity Rule 31 is hereby expressly waived.

FRANK HAGERMAN,
Counsel for Complainant.

122 Afterwards, towit, on the 2nd day of August, A. D. 1907, the demurrer of Herbert S. Hadley, Attorney General was filed.

Said demurrer is in words and figures as follows:—

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 3001.

THE ST. JOSEPH AND GRAND ISLAND RAILWAY COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendants.

The Demurrers of the Above-named Defendant, Herbert S. Hadley, Attorney General, to the Amended and Supplemental Bill of Complaint as Amended.

First. This defendant, by protestation, not confessing or acknowledging all or any of the matters and things in the complainant's amended and supplemental bill of complaint as amended to be true in manner and form as the same are therein and thereby set forth and alleged, doth demur thereto and for cause of demurrer showeth:

1. That the said complainant has not, in and by said amended and supplemental bill of complaint, as amended, made or stated any such cause as doth or ought to entitle it to the relief thereby sought and prayed for, from or against this defendant, or to any relief whatsoever.

2. It appears upon the face of complainant's amended and supplemental bill of complaint as amended that the complainant has an adequate remedy at law.

3. The matters and things set forth in complainant's amended and supplemental bill of complaint, as amended, are not nor are any of them germane to or supplementary of the original bill in this case.

123 4. If the matters and things set forth in complainant's amended and supplemental bill of complaint, as amended, entitle the complainant to any relief whatsoever, they constitute a

new, original and independent cause of action, not connected with or dependent upon the cause of action set forth in the original bill.

Second. This defendant further demurs to the fifth, sixth, seventh and eighth paragraphs of the complainant's amended and supplemental bill of complaint, as amended, because (*a*) the same are not germane to or supplementary of the original bill herein; (*b*) if the matters and things set forth in said paragraphs entitle the complainant to any relief whatsoever, they constitute a new, original and independent cause of action not connected with or dependent upon the cause of action set forth in the original bill; (*c*) the matters and things set forth in said paragraphs do not entitle complainant to the relief prayed for, or to any relief whatsoever.

Third. This defendant further demurs to the ninth and tenth paragraphs of the complainant's amended and supplemental bill of complaint, as amended, because (*a*) the matters and things set forth in said paragraphs are not germane to or supplementary of the original bill herein; (*b*) if the matters and things set forth in said paragraphs entitle the complainant to any relief whatsoever, they constitute a new, original and independent cause of action not connected with or dependent upon the cause of action set forth in the original bill; (*c*) the matters and things set forth in said paragraphs do not entitle the complainant to the relief prayed for, or to any relief whatsoever.

Fourth. This defendant further demurs to the eleventh and twelfth paragraphs of the complainant's amended and supplemental bill of complaint, as amended, because (*a*) the matters and things set forth in said paragraphs are not germane to or supplementary of the original bill herein; (*b*) if the matters and things set
124 forth in said paragraphs entitle the complainant to any relief whatsoever, they constitute a new, original and independent cause of action, not connected with or dependent upon the cause of action set forth in the original bill; (*c*) the matters and things set forth in said paragraphs do not entitle the complainant to the relief prayed for, or to any relief whatsoever.

Fifth. This defendant further demurs to the fourteenth, fifteenth, sixteenth, seventeenth, eighteenth and nineteenth paragraphs of the complainant's amended and supplemental bill of complaint, as amended, because (*a*) the matters and things set forth in said paragraphs are not germane to or supplementary of the original bill herein; (*b*) if the matters and things set forth in said paragraphs entitle the complainant to any relief whatsoever, they constitute a new, original and independent cause of action, not connected with or dependent upon the cause of action set forth in the original bill; (*c*) the matters and things set forth in said paragraphs do not entitle the complainant to the relief prayed for or to any relief whatever; (*d*) it appears from said paragraphs that the State Circuit Court of Kansas City, Missouri, has jurisdiction of the suit against the complainant pending therein and mentioned in said paragraphs; (*e*) the State of Missouri had a lawful right to institute said suit in said State court, and said State court had a lawful right to entertain jurisdiction of the same; (*f*) the said Attorney General had a

lawful right and the authority to institute the suit referred to in said paragraphs against the complainant, in the State Circuit Court at Kansas City, Missouri, and he has the lawful right and authority to proceed with and prosecute the same to a conclusion; (*g*) if the complainant is aggrieved by the suit against it in the State Circuit Court mentioned in said paragraphs, it has an adequate remedy by making its defense (if any it have) to the same, in said State court.

Sixth. This defendant further demurs to the twentieth paragraph of complainant's amended and supplemental bill of complaint, as amended, because (*a*) the matters and things set
125 forth in said paragraph are not germane to or supplementary of the original bill herein; (*b*) if the matters and things set forth in said paragraph entitle the complainant to any relief whatsoever, they constitute a new, original and independent cause of action, not connected with or dependent upon the cause of action set forth in the original bill; (*c*) the matters and things set forth in said paragraph do not entitle the complainant to the relief prayed for or to any relief whatsoever; (*d*) it appears from said paragraph that the Circuit Court of Jackson County, Missouri, and the Circuit Court at St. Louis, Missouri, have jurisdiction, respectively, of the suits against the complainant and other railway companies mentioned in said paragraph; (*e*) the State of Missouri had a lawful right to institute the suits mentioned in said paragraph, and said State courts had a lawful right to entertain jurisdiction of the same; (*f*) the said Attorney General had a lawful right and the authority to institute in said State Circuit Courts the suits against the complainant and the other railway companies mentioned in said twentieth paragraph, and he has the lawful right and authority to proceed with and prosecute the same to a conclusion; (*g*) if the complinant or any of said other railway companies are aggrieved by the suits in said State Circuit Courts mentioned in said twentieth paragraph, they have an adequate remedy by making their defense (if any they have) to the same, in said State courts.

Seventh. This defendant further demurs to the twenty-first paragraph of complainant's amended and supplemental bill of complaint, as amended, because (*a*) the matters and things set forth in said pargraph are not germane to or supplementary of the original bill herein; (*b*) if the matters and things set forth in said paragraph entitle the complainant to any relief whatsoever, they constitute a new, original and independent cause of action, not connected with or dependent upon the cause of action set forth in the original bill; (*c*) the matters and things set forth in said paragraph do not entitle the complainant to the relief prayed for or to any relief whatever.

Wherefore, and for divers other good causes of demurrer
126 appearing in complainant's amended and supplemental bill of complaint, as amended, and in the paragraphs thereof specifically mentioned in the foregoing demurrers, numbered second, third, fourth, fifth, sixth and seventh, respectively, this defendant demurs thereto and humbly demands the judgment of this court whether he shall be compelled to make any further or other an-

swer to said amended and supplemental bill of complaint as amended, or to the said paragraphs hereinbefore specifically mentioned, or any of them, and prays to be hence dismissed with his costs and charges in this behalf most wrongfully sustained.

HERBERT S. HADLEY,
Attorney General;
JOHN KENNISH,
FREDERICK D. LEHMANN,
SANFORD B. LADD,
Solicitors for Defendant.

FREDERICK D. LEHMANN,
SANFORD B. LADD,
Of Counsel.

I hereby certify that the foregoing demurrer is, in my opinion, well founded in point of law.

SANFORD B. LADD,
Of Counsel for Defendant.

The affidavit required by Equity Rule 31 is hereby expressly waived.

FRANK HAGERMAN,
Counsel for Complainant.

127 Afterwards, towit, on the 2nd day of August, A. D. 1907, the joint and several demurrer of Joseph M. Patterson et al. was filed.

Said demurrer is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 3001.

THE ST. JOSEPH AND GRAND ISLAND RAILWAY COMPANY,
Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendants.

The Joint and Several Demurrer of Joseph M. Patterson, Charles E. Moss and George Dodd, Judges of the County Court of Jackson County, Missouri, and Arthur C. Warner, Treasurer of Said County, Four of the Defendants Herein, to Complainant's Original Bill of Complaint, its Amended and Supplemental Bill and the Amendment to Said Bill of Complaint.

These defendants, by protestation, not confessing all or any of the matters and things in complainant's original bill of complaint, its amended and supplemental bill, and the amendment to said bill of

complaint to be true in such manner and form as the same are therein set forth and alleged, demur thereto, and for cause of demurrer show that the said complainant has not in and by said original bill of complaint, its amended and supplemental bill, and the amendment to said bill of complaint, made or stated any such cause as doth or ought to entitle it to the relief thereby sought and prayed for from or against these defendants or either of them.

128 Wherefore, and for divers other good causes of demurrer appearing in said original bill of complaint, the said amended and supplemental bill, and the said amendment to the bill of complaint, these defendants respectively demur thereto and humbly demand the judgment of this court whether they shall be compelled to make any further or other answer to the said original bill of complaint, the said amended and supplemental bill, and the amendment to the bill of complaint, and pray to be hence dismissed with their costs and charges in this behalf most wrongfully sustained.

HERBERT S. HADLEY,
Attorney General;
JOHN KENNISH,
FREDERICK W. LEHMANN,
SANFORD B. LADD,
Solicitors for Defendants.

FREDERICK W. LEHMANN,
SANFORD B. LADD.
Of Counsel.

I hereby certify that in my opinion the foregoing demurrer is well founded in point of law

SANFORD B. LADD,
Of Counsel for Defendants.

The affidavit required by Equity Rule 31 is hereby expressly waived.

FRANK HAGERMAN,
Counsel for Complainant.

129 Afterwards, towit, on the 2nd day of August A. D. 1907, the joint and several demurrer of Wyeth Hardware and Manufacturing Company et al. was filed.

Said demurrer is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 3001.

THE ST. JOSEPH AND GRAND ISLAND RAILWAY COMPANY, Complainant.

vs.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendants.

The Joint and Several Demurrer of Wyeth Hardware and Manufacturing Co. and Jones-Payne Hat Co., Two of the Defendants Herein, to Complainant's Amended and Supplemental Bill of Complaint as Amended.

These defendants, by protestation, not confessing or acknowledging all or any of the matters and things in the complainant's amended and supplemental bill of complaint, as amended, to be true in manner and form as the same are therein and thereby set forth and alleged, do demur thereto, and for cause of demurrer show:

First. That the said complainant has not in and by said amended and supplemental bill of complaint as amended, made or stated any such cause as ought to entitle it to the relief thereby sought and prayed for from or against these defendants, or to any relief whatsoever.

Second. If the matters and things set forth in complainant's amended and supplemental bill of complaint, as amended, entitle the complainant to any relief whatsoever, they constitute a new, original and independent cause of action, not connected with or dependent upon the cause of action set forth in the original bill.

130 Wherefore, and for divers other good causes of demurrer appearing in complainant's amended and supplemental bill of complaint as amended these defendants demur thereto and humbly demand the judgment of this court whether they shall be compelled to make any further or other answer to said amended and supplemental bill of complaint as amended, and pray to be hence dismissed with their costs and charges in this behalf most wrongfully sustained.

HERBERT S. HADLEY,
Attorney General;
JOHN KENNISH,
FREDERICK W. LEHMANN,
SANFORD B. LADD,
Solicitors for Defendants.

FREDERICK W. LEHMANN,
SANFORD B. LADD.
Of Counsel.

I hereby certify that the foregoing demurrer is in my opinion well founded in point of law.

SANFORD B. LADD,
Of Counsel for Defendants.

The affidavit required by Equity Rule 31 is hereby expressly waived.

FRANK HAGERMAN,
Counsel for Complainant.

131 Afterwards towit, on the 2nd day of August, A. D. 1907, the joint and several demurrer of Albert J. Brunswig et al. was filed.

Said demurrer is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 3001.

THE ST. JOSEPH AND GRAND ISLAND RAILWAY COMPANY,
Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendants.

The Joint and Several Demurrer of Albert J. Brunswig and T. P. Gordon, Two of the Defendants Herein, to Complainant's Original Bill of Complaint, its Amended and Supplemental Bill and the Amendment to said Bill of Complaint.

These defendants, by protestation, not confessing all or any of the matters and things in complainant's original bill of complaint, its amended and supplemental bill, and the amendment to said bill of complaint to be true in such manner and form as the same are therein set forth and alleged, demur thereto, and for cause of demurrer show that the said complainant has not in and by said original bill of complaint, its amended and supplemental bill, and the amendment to said bill of complaint, made or stated any such cause as doth or ought to entitle it to the relief thereby sought and prayed for from or against these defendants or either of them.

132 Wherefore, and for divers other good causes of demurrer appearing in said original bill of complaint, the said amended and supplemental bill, and the said amendment to the bill of complaint, these defendants respectively demur thereto and humbly demand the judgment of this court whether they shall be compelled to make any further or other answer to the said original bill of complaint, the said amended and supplemental bill, and the amendment to the bill of complaint, and pray to be hence dismissed with their costs and charges in this behalf most wrongfully sustained.

HERBERT S. HADLEY,
Attorney General;
JOHN KENNISH,
FREDERICK W. LEHMANN,
SANFORD B. LADD,
Solicitors for Defendants.

FREDERICK W. LEHMANN,
SANFORD B. LADD, *Of Counsel.*

I hereby certify that in my opinion the foregoing demurrer is well founded in point of law.

SANFORD B. LADD,
Of Counsel for Defendants.

The affidavit required by Equity Rule 31 is hereby expressly waived.

FRANK HAGERMAN,
Counsel for Complainant.

133 Afterwards, to-wit, on the 24th day of September, 1907, an Interlocutory Report of Special Master was filed.

And afterwards, to-wit, on the 7th day of October, 1907, said Interlocutory Report of Special Master and the Order thereon, *was* refiled.

Said Interlocutory Report and the Order thereon *is* in words and figures as follows:

Circuit Court of the United States Western Division of the Western District of Missouri.

MISSOURI PACIFIC RAILWAY COMPANY
vs.
HERBERT S. HADLEY, Attorney General, et al.

CHICAGO, BURLINGTON & QUINCY RAILWAY CO.
vs.
HERBERT S. HADLEY, Attorney General, et al.

WABASH RAILROAD COMPANY
vs.
HERBERT S. HADLEY, Attorney General, et al.

Interlocutory Report of Special Master.

To the Honorable the Judges of said Court:

By reason of the premises hereinafter recited the undersigned Special Master to whom the above entitled and fifteen other like causes were referred by order of this Court bearing date March 5th, 1906, begs leave to present this special interlocutory report.

Having completed the taking of the evidence offered by the respective parties complainants and defendants in the three cases above named, these having been duly selected out of the eighteen for hearing in the first instance in pursuance of the order of reference, the same were set down for argument before the Master on June 18th, 1907. On said date, however, the complainants in all the cases, having immediately prior thereto filed their amended and supplemental bills in this Court, further proceedings before the Master

were, by consent of all parties, suspended subject to be re-
134 sumed on due notice.

As appears in said amended and supplemental bills and the several amendments thereof since filed, copies of all whereof have been duly received by the Master, there have been brought into these cases various new and additional matters not embraced in the issues so referred.

And being in doubt as to whether the filing of such amended and supplemental bills do of necessity or should, pending proceedings in Court thereon, operate as a stay of further proceedings before him and of his report upon the matters and issues so referred, the Special Master therefore submits this Interlocutory Report and respectfully prays for such further orders and directions in the premises as to the Court may seem meet.

F. L. SCHOFIELD,
Special Master.

The amendments pending the hearing of the original bills of complaint had the effect, in law, of uniting the matters complained of in one bill. They, therefore, constitute but one bill of complaint, and all matters involved should be fully heard and the Master's findings should be embraced in a single report.

(Signed) JNO. F. PHILIPS, *Judge.*

October 7th, 1907.

135 Afterwards, to-wit, on the 13th day of November, 1907, the following order was filed and entered of record, to-wit:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD CO., Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendants.

Also

In Equity.

RAILROAD COMPANIES
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2998, 2999, 3000, 3001, 3002, 3003, 3004 and 3006.

Order.

This cause coming on for hearing this November 13, 1907, it is by consent of parties ordered that leave of court be and is hereby

granted to amend complainant's "Amendment to complain-t's bill of Complaint," by erasing and striking out of paragraph 15 thereof the words "between 12 and 1 o'clock A. M." in lines 27 and 28 on page 2, and the words "at the said hours of" in lines 1 and 2 on page 3, and complainant's counsel are directed to forthwith make such erasure.

(Signed) SMITH McPHERSON, *Judge.*

136 Afterwards, to-wit, on the 10th day of April, 1908, the following order was filed and entered of record:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 3001.

ST. JOSEPH & GRAND ISLAND RAILWAY COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General, et al., Defendants.

Order.

This cause came on for hearing this 10th day of April, 1908, upon the demurrers filed herein. The parties appeared by their respective counsel, and the court, after argument, being fully advised in the premises, overrules said demurrers.

(Signed) SMITH McPHERSON, *Judge.*

137 Afterwards, towit, on the 12th day of May, A. D. 1908, the joint answer of John A. Knott et al. was filed.
Said answer is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 3001.

THE ST. JOSEPH & GRAND ISLAND RAILWAY COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendants.

The Joint Answer of the Defendants John A. Knott, Frank Wightman and H. R. Oglesby, Railroad Commissioners of the State of Missouri, to the Complainant's Amended and Supplemental Bill and the Amendment Thereto.

These defendants now, and at all times hereafter, saving to themselves all and all manner of benefit or advantage of exception, or otherwise, that can or may be had or taken to the errors and imper-

fections in said Amended and Supplemental Bill of Complaint, as amended, for answer thereto, or to so much thereof as they are advised is material or necessary to make answer to, answering say:

That they do hereby adopt as their Answer herein the answer of Herbert S. Hadley, Attorney-General of the State of Missouri, and all and singular the statements and averments thereof as fully as if the same were repeated herein, and they ask that the said Answer be taken in all respects as the Answer of them and of each of them.

These defendants deny that the complainant is entitled to any relief whatever against these defendants, without this, that
138 any other matter, cause or thing in the complainant's amended and supplemental bill and the amendments thereto, contained, material or necessary for these defendants to make answer unto, and not herein or hereby well and sufficiently answered, confessed, traversed and avoided or denied, is true to the knowledge or belief of these defendants, or any of them; to each of which matters and things these defendants are ready and willing to aver, maintain and prove, as this Honorable Court shall direct, and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

HERBERT S. HADLEY,
Attorney General;
JOHN KENNISH,
Ass't Attorney-General,
Solicitors for Defendants.

SANFORD B. LADD,
F. W. LEHMANN,
Of Counsel.

Received copy of the above and foregoing Answer May 4, 1908.

R. A. BROWN,
FRANK HAGERMAN,
Solicitors for Complainant.

139 Afterwards, to wit, on the 12th day of May, A. D. 1908, the answer of Herbert S. Hadley, Attorney General, was filed. Said answer is in words and figures as follows:

In Equity. No. 3001.

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

THE ST. JOSEPH & GRAND ISLAND RAILWAY COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendants.

Answer of Herbert S. Hadley, Attorney General of the State of Missouri, to the Complainant's Amended and Supplemental Bill and Amendment Thereto.

This defendant now, and at all times hereafter, saving to himself all and all manner of benefit, or advantage of exception, or otherwise, that can or may be had or taken to the many errors and imperfections in said Amended and Supplemental Bill of Complaint, as amended, for answer thereto, or to so much thereof as he is advised is material or necessary to make answer to, answering says:

This defendant admits Paragraphs 1, 2, 3 and 4 of the Amended and Supplemental Bill.

This defendant denies that the Governor of the State, in giving his written reasons for approving the Act of 1905, referred to or indicated that it was with some reluctance that he signed the same.

And this defendant denies that any acknowledgment was made of the invalidity of the Act of 1905, referred to in Paragraphs 5 and 6 of the Amended and Supplemental Bill; but he admits that the Legislature of the State of Missouri did pass an act, effective June 14, 1907, in words and figures as set forth in Paragraph 6 of said Amended and Supplemental Bill.

But this defendant denies that it was the purpose or the intention of the defendant herein to attempt to enforce all penalties which may accrue if the said acts are held to be illegal.

This defendant admits that the Legislature of Missouri in 1907 passed the two acts set forth in Paragraph 7 of said Amended and Supplemental Bill.

And this defendant denies that if the complainant should charge the maximum rates prescribed by the acts of the General Assembly of the State of Missouri enacted at its session in 1907, the
140 total gross receipts of the complainant from the State traffic would be reduced in a very large sum, and denies that the said freight acts, or any of them, are violative of the provisions of the Sonstitution to the same extent as complainant has alleged with respect to the Act of 1905, or to any extent whatever.

And this defendant denies that the rates fixed by the Acts of 1907 are unreasonable and confiscatory, and less than the cost of the service.

And this defendant denies that the Governor of the State of Mis-

souri in calling for the passage of said Act of 1907, and the Legislature in passing the same, did so for the avowed purpose of increasing certain of the maximum rates of the Act of 1905, which they conceived had in this litigation been proved to be unreasonable and confiscatory, and could not be enforced.

And this defendant denies that the rates as finally fixed by the Acts of 1907 were not on such a basis as would return a reasonable and fair compensation to the complainant upon the value of that portion of its property devoted to such use.

And this defendant denies that if the laws in existence in 1905, relative to passenger fares, had remained in force, the freight rates, as fixed by said Acts of 1907, would be unreasonable or confiscatory, or that they would not give a just return upon the value of that portion of complainant's property devoted to said traffic.

This defendant denies that the Legislature of the State acted without any fixed or definite knowledge upon the subject of rates, or that they erroneously conceived that if the increase in freight rates were necessary and were made, there could be a general equalization of rates by a decrease in the passenger rates, and that thereby in substance, they could legally overcome and offset any advantage from an increase in freight rates by decreasing the maximum rates to be charged for said passenger traffic about 33 1/3 per cent, and thus while defeating pending litigation, the public, as a whole, would not be the loser.

This defendant denies that the result was that as part and parcel of one transaction and substantially as one law, and to accomplish the purposes alleged in the Amended and Supplemental Bill, there was passed, and the Governor approved, an act called the "Passenger Act," taking effect on June 14, 1907; but this defendant admits that the act relative to passenger rates, in words and figures as set forth in said Paragraph 9 of the Amended and Supplemental Bill, was enacted by the Legislature of the State of Missouri.

And this defendant denies that the said act regulating passenger rates is violative of any provisions of the Constitution of the State of Missouri, or of the United States, and denies that it is subject to any of the objections made in the original bill to the Act of 1905, and denies that any of the facts alleged in the original bill as to why the Act of 1905 should be held to be void and action thereunder restrained, are true as to the Acts of 1907, or of the said passenger act.

This defendant denies that the said Passenger Act will reduce the earnings of the complainant from its passenger business in the practical and ordinary operation of the road, or otherwise, substantially one-third, or in any amount whatsoever.

The defendant has no knowledge or information or belief as to the aggregate amount of the State passenger earnings for the year 1906, and he denies that if the passenger act aforesaid had been applied thereto, State earnings would have been reduced in any sum whatever.

141 And this defendant denies that the value of that portion of complainant's property devoted to the carriage of State business, considered as a whole, or separately, as to the passenger business only, is such in any case that the reduction in rate by said Passenger Act would fail to make a reasonable return on such valuation, and denies that it would cause such business to be done at an actual loss.

This defendant denies that the said Passenger Act was passed for the avowed purpose of reducing the State passenger rates of complainant so as to off-set and overcome the supposed increase of freight rates made under the Act of 1907, and denies that the attempt was made to frame each act so as to avoid the injunctive relief in this or in each action heretofore instituted by railroad companies operating lines in Missouri.

And this defendant denies that if the injunction be not granted herein, the complainant is without means of adequate and proper relief, or would be denied due process of law. And this defendant alleges the fact to be that in the suit instituted by the State of Missouri to require by mandamus or mandatory injunction the observance of the laws of the said State, every defense, which the complainant herein and defendant in said suit may have, could be presented and considered, and the State of Missouri is contemplating no suit of any kind which would in any manner embarrass the complainant in the assertion of any rights which it may have.

This defendant says that it is not true that the special duties devolving upon the members of the Board of Railroad Commissioners and the Attorney General, as stated in the original bill, apply to the Acts of 1907, and the Passenger Act aforesaid.

And this defendant denies that it is necessary or proper that the county judges and county treasurers of the State of Missouri should be made parties to this litigation, or that any private person should be drawn in as defendant thereto.

This defendant denies that the rates fixed by each, or any of the said Acts of 1907, of by said Passenger Act, or that the rates fixed by all of said acts, as a whole, are unreasonable or confiscatory, or that they will force an unreasonable reduction or confiscation of complainant's entire revenue, or of any part thereof, or that the said acts, or any of them, are in violation of the provisions of the Fourteenth Article of Amendment of the Constitution of the United States, or of any other provision of said Constitution.

And this defendant denies that to enforce the rates fixed by any of said acts would necessarily affect the interstate rates upon the same commodities. And this defendant alleges the fact to be that for many years past the complainant has voluntarily carried passengers in the State of Missouri, whose travel was wholly within the State, at the rate of two cents per mile. It has also carried many persons, other than employés of their own or other railroad companies, without exacting any compensation whatsoever, and the great bulk of passenger transportation within the State has been for many years past conducted at approximately two cents per mile,

and that the charge of three cents exacted by complainant of any persons was an unjust, excessive and discriminatory charge upon such persons.

Referring to Subdivision (*b*) of Paragraph 11 of complainant's Amended and Supplemental Bill, this defendant says that the real purpose of the original Bill herein was to determine whether
142 that portion of the property of complainant devoted to State freight business, could, if the Act of 1905 were enforced, receive such return upon its value as would be fair, reasonable and not confiscatory, and that upon the trial of the three cases heard by the Special Master such was the theory adopted by both parties, and the proofs were by both of them directed to that end. And this defendant avers that the only legitimate and proper inquiry in this suit is as to the questions of law and fact arising upon the issues made by the original Bill and the Answer thereto, as to the validity of the said Act of 1905, and the results of its operation, and whether the same, if enforced, would be confiscatory and unremunerative to the complainant. Defendant asserts that the purpose of the original Bill ought not to be, and cannot, without disregard of the established rule of procedure of the Court of Chancery, be changed and perverted, to the end that the effect of the freight rate Act, or the passenger rate Act of 1907, shall be considered in this litigation, and that the only question proper to be considered or determined by this court in this action is the consequences to the complainant of the enforcement of the said Act of 1905.

This defendant denies that on the 11th day of June, 1907, the complainant filed herein a written application for leave to file an Amended and Supplemental Bill, and he denies that upon the same day there was served upon the counsel for the defendants in the original Bill herein, and accepted by them, a written notice that a copy of the form of the said Amended and Supplemental Bill, reciting that application to file same and for a temporary injunction would be presented to this Court upon June 14, 1907, at the opening of said court at 10 a. m.

And he denies that two petitions in equity in the name and on behalf of the State of Missouri, referred to in Paragraph 15 of the said Amended and Supplemental Bill, as amended, were filed by him in disregard or in contempt of the jurisdiction of this Court; and he alleges the fact in that regard to be that on the thirteenth day of June, A. D. 1907, he did, in the name and on behalf of the State of Missouri, by virtue of his office and authority as Attorney-General of the said State, file two petitions of the State of Missouri, the same being petitions in equity against the complainant herein, as defendant in the said suits, the one asking that the said complainant herein, defendant in said suit, be required to comply with the maximum freight rates provided by the laws of the State of Missouri, enacted at the legislative session of the year 1907, and the other asking that the said complainant herein, defendant in the said suit, be required to comply with the passenger rates fixed by the laws of the State of Missouri, enacted at the legislative session of the year 1907, and the said petitions were filed in the Circuit Court of the State of Missouri

in and for the City of St. Louis, the same being a court of the State of Missouri of competent and general jurisdiction, and the said petitions were filed, and the suits instituted thereby, were pending, and summons, according to the laws of the State of Missouri, issued upon the said petitions and served upon the complainant herein, defendant therein, before the hour of 10 o'clock a. m. of said 14th day of June, 1907, and before any Amended or Supplemental Bill, or any amendment to the original Bill herein was filed by the complainant, or before any such amended or Supplemental Bill, or amendment to the original Bill was presented to this Court for consideration.

And this defendant alleges further that the said petition in equity, so as aforesaid filed by him in the Circuit Court of the City of St. Louis, relative to the freight rates, has been dismissed by him, and is no longer pending, but that the said petition in equity, so
143 as aforesaid filed by him in the Circuit Court of the City of St. Louis, relative to the passenger rates, is still pending and undetermined.

And this defendant admits that the said Circuit Court of the City of St. Louis did on the said 13th day of June, A. D. 1907, issue its restraining order, returnable upon the — day of June, 1907, in the said suit in equity relative to the said passenger rates, requiring the complainant herein, and defendant therein, to comply with the law of the State of Missouri in that behalf.

This defendant admits that upon the 14th day of June, 1907, at 10 a. m., there were presented to this Court the application of complainant for leave to file its Amended and Supplemental Bill, and for a temporary injunction, and that a continuance of the hearing of said application for one day was granted by the said court, and that this Court, upon its own motion, made the orders stated and referred to in Paragraph 16 of the said Amended and Supplemental Bill, as amended.

This defendant admits that upon June 17, 1907, this Court made and entered the order set forth in Paragraph 17 of the said Amended and Supplemental Bill, as amended.

And this defendant further admits that subpœnas have been issued, as by said order provided, and served upon this defendant.

And this defendant admits that upon June —, 1907, the said Circuit Court of the City of St. Louis, upon the application of this defendant, entered an order dismissing the petition in equity of the State of Missouri theretofore filed by him relative to the freight rates prescribed by the laws of the State of Missouri, and that upon the same day, upon his application, the said court entered an order setting aside the restraining order previously issued by it in the suit in equity of the State of Missouri against this complainant, as defendant therein, relative to the passenger rates prescribed by the laws of the State of Missouri.

And this defendant avers that he made his application to set aside the said restraining order because this complainant had put into effect the passenger rates prescribed by the laws of the State of Missouri and was fully observing the same, and has continued so to do to the present time.

This defendant admits that he did not dismiss the said suit in equity, relative to the passenger rates, and has insisted that it should remain pending, and that it is his purpose to proceed therewith, if the complainant herein, defendant in the said suit, shall, at any time hereafter, cease to comply with the laws of the State of Missouri relative to passenger rates in said State.

And this defendant denies that the said court has no jurisdiction in the premises, or that it has no right or power to compel complainant herein and defendant in the said suit, to put in force the passenger rates referred to, and he denies that any action by the said court would deny to complainant the protection accorded to it by the Fourteenth Amendment to the Constitution of the United States, and he alleges the fact in that regard to be that the said Circuit Court of the City of St. Louis is a court of competent and general jurisdiction, having jurisdiction alike of the person of the complainant herein, defendant in the suit pending in the said Circuit Court of the City of St. Louis, and that due process of law can and will be had by the complainant herein, defendant in the said suit, in the said suit, and any defense that it may have to the said suit in equity, so as aforesaid brought by the State of Missouri in said Circuit Court of the City of St. Louis, can and will be fully and fairly heard
144 by said Circuit Court of the City of St. Louis, and any rights which complainant herein, defendant in the said suit, in said State court may have, will be fully conserved and protected.

This defendant denies that the facts alleged in Paragraphs 13 to 18, inclusive, of the Amended and Supplemental Bill, as amended, are true as to each or any of the several railroad companies named in Paragraph 20 of the said Amended and Supplemental Bill, as amended, except as they correspond with the admissions and averments hereinbefore set forth in this Answer.

This defendant admits that each of said companies had filed original bills in this Court similar to the original bill filed by the complainant herein.

This defendant also admits that the suits in equity brought by the State of Missouri were brought against the several railroad companies named in said Paragraph 20 either in the Circuit Court of Jackson county, or in the Circuit Court of the City of St. Louis, as in said paragraph stated.

And this defendant admits that it is his purpose to prosecute the said suits in equity, so brought by the State of Missouri in its said courts, in relation to the passenger rates, in the event that said companies, defendants in said suits, shall fail to continue in observance of the passenger rates prescribed by the laws of the State of Missouri.

And this defendant denies that as to any of the complainants in the suits pending in the Circuit Court of the United States, defendants to the suits brought by the State of Missouri, restraining orders from the said State courts were served in the court room of this Court while the said parties, or any of them, were presenting applications to this Court upon June 14, 1907, but, on the contrary, this defendant alleges the fact to be in that regard that the said restraining orders

were all served upon the proper officers of the said companies at their respective offices.

And this defendant denies that the said passenger Act of 1907, and that each or any of the freight acts of the State of Missouri of 1907, is void and of no effect, for the reason that it is an attempt to deprive complainant of its property without due process of law, or denies the complainant the equal protection of the law, and he alleges the fact in that regard to be that the said passenger act of 1907 is a reasonable and proper regulation of passenger rates in the State of Missouri, and that each of said freight acts of 1907 is a reasonable and proper regulation of rates for the transportation of freight; and that the said rates so prescribed by the said several acts of the General Assembly of the State of Missouri, and each of them, prescribe fair, proper and remunerative rates for the service to which the said acts severally relate.

And this defendant denies that the penalties provided by the said acts for a violation of them are harsh and unreasonable, or that they could in anywise be made burdensome, except through a persistent and continued disregard of the law by the said complainant.

This defendant denies that the said acts, or any of them, influence, affect or bear upon interstate freight and passenger traffic, or that they, or any of them, fix and regulate interstate freight and passenger traffic.

As to whether the Kansas City, Clinton & Springfield Railway Company, and the St. Louis & San Francisco Railroad Company, between Kansas City and Springfield, are of substantially the same length, or as to whether the line of the former between those points extending into and out of Kansas, or whether all its carriage
145 between said points is interstate, or whether the other company has one line which in its course runs into and out of a portion of Kansas, and another separate line between said points which extends wholly through Missouri, or whether the carriage between said points upon one line is interstate and upon the other state; or whether between Joplin and Kansas City there are three trunk lines of substantially the same length, some of which are within the State, and some of which are without the State, or whether all of the traffic on some of said lines between Joplin and Kansas City is State, and on other of said lines, between said points, is interstate; or whether between St. Louis and St. Joseph, Missouri, the line of the Chicago, Burlington & Quincy Railroad Company does not pass out of the State, or whether the traffic on said road between said points on said line is wholly State; or whether the line of the Missouri Pacific Railway Company between said St. Louis and St. Joseph in its course passes into and out of the state of Kansas, or whether the entire traffic upon said railway between said points is interstate; or whether between Kansas City and St. Joseph, Missouri, there are four trunk lines of substantially equal length, some of which are wholly within Missouri, and upon some of which all their traffic between said points is State, or whether the lines of some of them pass into and out of Kansas, or the entire traffic upon them, between said points, is wholly interstate, this defendant has no knowledge, information or belief.

This defendant admits that some of the large and populous communities of the State are upon its eastern and western borders. He admits that the main course of part of the traffic through the State is east and west. He has no knowledge, information or belief as to whether any of the railroads in the State either separate lines extending into other states, or into the states of Kansas or Illinois, or whether any of them have joint freight and passenger traffic arrangements with lines running into those states, or interstate carriage for freight and passengers.

As to whether the interstate passenger rates are higher than those fixed by the passenger act of 1907, or whether passengers starting from points in Missouri to go to other states buy tickets at two cents a mile to the last station in Missouri upon its border, and then buy tickets or pay fare from thence to their interstate destination, and vice versa, this defendant has no knowledge, information or belief.

As to what the interstate rate from St. Louis to Topeka, Kansas, is, or has been, this defendant has no knowledge, information or belief; or as to whether a passenger starting from St. Louis for Topeka buys his tickets in the manner stated in the Amended and Supplemental Bill, as amended.

He denies that the lowering of the State rate for the transportation of passengers necessarily affects, fixes or lowers the interstate passenger rate, and he denies that the same is true of the freight traffic.

This defendant denies that the complainant is entitled to any relief whatever against this defendant, without this, that any other matter, cause or thing in the complainant's Amended and Supplemental Bill and the amendments thereto, contained, material or necessary for this defendant to make answer unto, and not herein or hereby well and sufficiently answered, confessed, traversed and avoided or denied, is true to the knowledge or belief of this defendant; all which matters and things this defendant is ready and willing to aver, maintain and prove, as this Honorable Court shall direct, and hum-
146 bly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

HERBERT S. HADLEY,
Attorney-General;
JOHN KENNISH,
Assistant Attorney General,
Solicitors for Defendant.

SANFORD B. LADD,
F. W. LEHMANN,
Of Counsel.

Received copy of the above and foregoing Answer May 4, 1908.

R. A. BROWN,
FRANK HAGERMAN,
Solicitors for Complainant.

147 Afterwards, to-wit, on the 1st day of June, A. D., 1908, the replication of complainant to the joint answer of John A. Knott, et al., was filed.

Said replication is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 3001.

ST. JOSEPH & GRAND ISLAND RAILWAY, COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendants.

Replication of Complainant to the Answer of Herbert S. Hadley, Attorney General of the State of Missouri, to the Complainant's Amended and Supplemental Bill and the Amendment Thereto.

This replicant saving and reserving to itself all and all manner of advantage of exception which may be had or taken to the manifold errors, uncertainties and insufficiencies of the answer of the said defendant for replication thereunto, saith: That it does and will aver, maintain and prove its said bill to be true, certain and sufficient in the law to be answered unto by the said defendant, and that the answer of the said defendant, is very uncertain, evasive and insufficient in law to be replied unto by this replicant; without that, that any other matter or thing in the said answer contained, material or effectual in law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this replicant is ready to aver, maintain and prove as this honorable court shall direct, and humbly prays as in and by its said bill it hath already prayed.

R. A. BROWN,
Solicitor for Complainant.

FRANK HAGERMAN,
Of Counsel.

148 Afterwards, to-wit, on the 1st day of June, A. D., 1908, the replication of complainant to the answer of Herbert S. Hadley, Attorney General, was filed.

Said replication is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 3001.

ST. JOSEPH & GRAND ISLAND RAILWAY, COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendants.

Replication of Complainant to the Joint Answer of John A. Knott, Frank Wightman and H. R. Oglesby, Railroad Commissioners of the State of Missouri, to the Complainant's Amended and Supplemental Bill and the Amendment Thereto.

This replicant saving and reserving to itself all and all manner of advantage of exception which may be had or taken to the manifold errors, uncertainties and insufficiencies of the answer of the said defendant for replication thereunto, saith: That it does and will aver, maintain and prove its said bill to be true, certain and sufficient in the law to be answered unto by the said defendant, and that the answer of the said defendant, is very uncertain, evasive and insufficient in law to be replied unto by this replicant; without that, that any other matter or thing in the said answer contained, material or effectual in law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this replicant is ready to aver, maintain and prove as this honorable court shall direct, and humbly prays as in and by its said bill it hath already prayed.

R. A. BROWN,
Solicitor for Complainant.

FRANK HAGERMAN,
Of Counsel.

149 Afterwards, to-wit, on the 13th day of June, 1908, the following order was filed and entered of record, to-wit:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General, et al., Defendants.

And also

RAILROAD COMPANIES
vs.
HERBERT S. HADLEY, Attorney General, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997 2998, 2999, 3000, 3001, 3002, 3003, 3004 and 3006.

Order.

Causes numbered 2988, 2989, 2990, 2991, 2995, 2997, 3001, 3002, 3003 and 3006 came on for hearing this June 13, 1908, upon the application of complainants to at once set down for hearing their applications for temporary injunctions. The parties appeared by counsel, the defendants insisting that such hearing be postponed for a period of ninety days, and the court being fully advised in the premises Orders,

1. The Special Master shall file herein so much of the testimony as has been taken in any of the 18 cases.

2. Orders on the applications to set down for hearing at once the motions for temporary injunctions are deferred for the present, and in lieu thereof by consent of counsel all of the 18 cases are set for final hearing the 5th day of October, 1908, or as soon thereafter as the court can hear the same upon such evidence as has been heretofore taken, and such further oral and documentary evidence as then may be offered under the 67th rule in equity as amended.

(Signed) SMITH McPHERSON, *Judge.*

150 Afterwards, to-wit, on the 13th day of June, 1908, an Affidavit was filed. Said affidavit is in words and figures as follows:—

STATE OF MISSOURI,
City of St. Louis, ss:

T. F. Wharton, being first duly sworn, says that he is Manager of the Saint Louis Office of Haskins & Sells, Certified Public Accountants, and has been for the past three years; that the firm of Haskins & Sells has been employed by the State of Missouri for the past two years as expert accountants in connection with the Maximum Freight Rate Litigation and the Passenger Rate Litigation; and that as Manager of the Saint Louis Office, this affiant has been

connected with all of said work and is familiar therewith and with the length of time required for such work; that he was asked by the Attorney General on the 9th day of June, 1908, to come to Jefferson City for the purpose of making an examination of statements filed on that date by the following named railroads:

Missouri Pacific Railway Company,
Missouri, Kansas & Texas Railway System,
Chicago, Great Western Railway Company,
Chicago, Rock Island & Pacific Railway Company,
St. Louis & San Francisco Railroad Company,
St. Louis Southwestern Railway Company,
Chicago & Alton Railroad Company,
St. Joseph & Grand Island Railway Company,
Kansas City, Clinton & Springfield Railway Company,
Atchison, Topeka & Santa Fe Railway Company,

such examination to be made in order to determine the length of time necessary for the verification of the reports submitted by the aforesaid railroad companies and for the preparation of reports in relation thereto; that on the 10th day of June, 1908, this affiant went to Jefferson City for the purpose indicated; that he then
151 received from Attorney General Hadley the statements referred to, and more particularly described in Exhibits "A" to "J" hereto attached and made a part of this affidavit; Further, that in order to properly pass upon the reports referred to, it will be necessary First, to verify the clerical accuracy of the figures themselves; Second, to verify the correctness of the comparisons made where there have been such comparisons, and where no comparisons have been made, it will be necessary to prepare, or have prepared proper comparative statements; Third, to verify the correctness of the division of expenses between freight and passenger business and between State and Inter-State business; and Fourth, it will be necessary to compare the method used in dividing expenses with the method by which such expenses were divided by the Missouri Pacific, Burlington and Wabash Railroads in the testimony already heard in the maximum Freight Rate cases. In addition to this, it will be necessary to secure information in other states, where there has been no change in passenger rates during the past two years, as to the effect on Passenger earnings of the business depression, which began about the middle of October, 1907. It will also be necessary to secure from other states where the two cent passenger law has been in effect for some time, information showing the effect of the operation of the law on the earnings of the railroad companies.

In view of the amount of work above outlined that it will be necessary to do in connection with the statements hereinbefore referred to, this affiant believes that it will require the services of four or five experienced accountants for about three months to make the necessary verifications, prepare the necessary statistics and place in proper form all such matter for the information of the Court.

T. F. WHARTON.

Subscribed and sworn to Before me this 11th day of June, 1908. Commission expires Jany. 14, 1911.

[SEAL.] FRANK WELLER,
Notary Public, City of St. Louis, Mo.

NOTE.—In the attached exhibits, the word "State" is used to indicate "Intra-State" business.

152 EXHIBIT "A."

Missouri Pacific Railway Company.

Statements Showing Passenger Earnings by Months for the Six Months Ended December 31, 1907 *and* 1906, *Divided Between State and Interstate, with Expenses for the Periods Named; Also Reports Showing Freight Earnings and Expenses for the Same Periods.*

Method of dividing expenses and charges between freight and passenger, and State and Inter-State business is not shown.

Summary of Intrastate Passenger Business Only as Shown by Statements for the Six Months Ended December 31.

	1907.	1906.	Increase.
July to October.....	$580,056.65	$564,593.97	$15,462.68
November and December	218,420.34	245,212.35	26,792.01*†
Total.....	$798,476.99	$809,806.32	$11,329.33*†
Operating Expenses....	728,676.35	664,730.09	63,946.26
Net Earnings.....	$69,800.64	$145,076.23	$75,275.59*†
Charges, not Including Interest	23,980.87	8,582.45*	32,453.32
Available for Interest and Dividends.....	$45,929.77	$153,658.68	$107,728.91*†

[*In red ink in copy.]
† Decrease.

153 EXHIBIT "B."

Missouri, Kansas & Texas Railway System.

Various Monthly Statements of Passenger and Freight Earnings and Expenses for the Period from June 19 to December 31, 1907, with Statements by Months for the Period from June 19 to September 18, 1907 and 1906.

State and Inter-state business is not separated in reports.

Method of dividing expenses between freight and passenger business is not shown.

Summary of Passenger Earnings, Expenses and Charges, as Shown by Statements, for the Periods from June 19 to September 18.

	1907.	1906.	Increase.
Revenue	$365,573.83	$318,861.06	$46,712.77
Operating Expenses	235,619.96	225,148.53	10,471.43
Net Earnings	$129,953.87	$93,712.53	$36,241.34
Taxes and Rentals	25,381.17	27,261.31	1,880.14*†
Available for Interest and Dividends	$104,572.70	$66,451.22	$38,121.48

[*In red ink in copy.]
† Decrease.

154 EXHIBIT "C."

Chicago Great Western Railway Company.

Statements (Supposed to be Filed by this Company) Showing Passenger Earnings Only by Months for the Periods from June 19 to September 18, 1907 and 1906, and Also for the Three Months Ended September 30, 1907 and 1906, Divided Between State and Inter-State.

No expenses are given.

Summary of Passenger Earnings, as Shown by Statements for the Periods from June 19 to September 18.

	1907.	1906.	Decrease
Intra-State	$12,568.23	$14,604.75	$2,036.52
Missouri to Other States.	19,423.07	21,753.31	2,330.24
Other States to Missouri.	20,297.69	18,783.71	1,513.98*†
Other States through Missouri	1,225.86	1,047.64	178.22*†
Between Points in Missouri Through Kansas.	4,181.53	4,292.36	110.83
Total	$57,696.38	$60,481.77	$2,785.39

[*In red ink in copy.]
† Increase.

155 EXHIBIT "D."

Chicago, Rock Island & Pacific Railway Company.

Statement (Tentative Figures Only) for Period from June 19 (6 A. M.) to and Including September 18, 1907 and 1906, of Passenger and Freight Earnings, Expenses and Taxes.

Business is not divided between State and Inter-state.
Method of dividing expenses is not given.

Summary of Passenger Earnings, Expenses and Taxes, as Shown by Statement, for the Period Mentioned Above.

	1907.	1906.	Increase.
Revenue	$271,240.36	$246,701.04	$24,539.32
Operating Expenses:			
Maintenance of Way and Structures	$113,162.23	$85,857.89	$27,304.34
Maintenance of Equipment	48,251.58	37,947.48	10,304.10
Other Expenses	162,531.00	163,760.05	1,229.05*†
Total	$323,944.81	$287,565.42	$36,379.39
Deficit from Operations	$52,704.45	$40,864.38	$11,840.07
Taxes	5,411.14	3,946.88	1,464.26
Deficit before deducting Interest, etc	$58,115.59	$44,811.26	$13,304.33

[*In red ink in copy.]
† Decrease.

156 EXHIBIT "E."

St. Louis & San Francisco Railroad Company.

Statements by Months and in Total for the Three Months Ended September 30, 1907, *of State and Inter-State Passenger and Freight Earnings, Expenses and Charges.*

Method of dividing expenses and charges between Freight and Passenger business is not shown: Expenses and Charges, and Miscellaneous earnings are divided between State and Inter-State business on the basis of the actual earnings of each class of business.

No comparisons are made with the same periods of the previous year, under three-cent law.

Summary of Intra-State Passenger Business, as Shown by Statements, for the Three Months Ended September 30, 1907.

Revenue	$718,992.65
Operating Expenses	599,298.01
Net Earnings	$119,694.64
Taxes and Rentals	24,104.07
Available for Interest and Dividends	$95,590.57

157 EXHIBIT "F."

St. Louis Southwestern Railway Company.

Statement for Six Months Ended December 31, 1907, *of State and Inter-State Passenger and Freight Earnings, Expenses and Charges, with Memorandum of Bases Used in Dividing Revenues, Expenses and Charges between Freight and Passenger and State and Inter-State Business.*

Expenses are divided between Freight and Passenger business generally on basis of revenue train-miles. Expenses are divided between State and Inter-State business on basis of number of passengers one mile. Taxes are divided on basis of freight and passenger revenue of each class.

No comparisons are made with same period of previous year, under three-cent law.

Summary of Intra-State Passenger Earnings and Expenses, as Shown by Statement, for the Six Months Ended December 31, 1907.

Revenue	$29,625.21
Operating Expenses	31,407.27
Loss from Operation	$1,782.06
Taxes and Sundry Charges (Less Other Income)	1,224.67
Total Loss, before deducting Interest	$3,006.73

NOTE.—During the same period, the Inter-State business shows a profit, before deducting interest, of $12,589.49.

158 EXHIBIT "G."

Chicago & Alton Railroad Company.

Statements for the Month of September, 1907, and the Three Months Ended September 30, 1907, and for the Month of October, 1907, and the Four Months Ended October 31, 1907, of Passenger Earnings, Expenses and Fixed Charges, Divided between State and Inter-State Business.

Method of apportioning expenses and charges to Passenger business *are* not shown. The method of dividing expenses between State and Inter-State business is not shown; but it is evidently on basis of passenger miles; charge divided between State and Inter-State Passenger business on basis of passenger miles.

No comparisons are made with same periods of previous year, under three-cent law.

Summary of Intra-State Passenger Earnings and Expenses, as Shown by Statements, for Four Months Ended October 31, 1907

Revenue	$193,822.87
Operating Expenses	116,267.44
Available for Interest and Charges	$77,555.43
Amount of Interest and Charges	62,283.85*
Surplus for the period	$15,271.58

*Amount of Interest alone not given.

159 EXHIBIT "H."

St. Joseph & Grand Island Railway Company.

Statement of Passengers Carried and Revenue Received, by Months, for the Six Months Ended December 31, 1907 and 1906, Divided between State and Inter-State.

No expenses are given.

Summary of Passenger Earnings, as Shown by Statements, for the Six Months Ended December 31.

	1907.	1906.	Increase.
Intra-State	$20,101.43	$25,115.93	$5,014.50
Inter-State	9,718.42	11,384.51	1,666.09
Total	$29,819.85	$36,500.44	$6,680.59

160 EXHIBIT "I."

Kansas City, Clinton & Springfield Railway Company.

Statements of Passengers Carried and Revenue Received, by Months, with Expenses Charged to Passenger Traffic, for the Period from June 19 to November 30, 1907 and 1906.

Expenses are not divided between State and Inter-State business. The method of apportioning expenses to Passenger business is not given.

Summary of Passenger Earnings and Expenses, as Shown by Statements, for the Periods Shown Above.

Earnings:	1907.	1906.	Increase.
Intra-State	$24,319.00	$26,159.57	$1,840.57*†
Inter-State	22,171.38	22,043.20	128.18
Total.....	$46,490.38	$48,202.77	$1,712.39*†
Operating Expenses	92,633.11	92,378.03	255.08
Deficit from Operations...	$46,142.73	$44,175.26	$1,967.47

[*In red ink in copy.]
† Decrease.

161 EXHIBIT "J."

Atchison, Topeka & Santa Fe Railway Company.

Statements for the Months of July, August, and September, 1907 and 1906, Showing Passenger and Freight Business, with Expenses of Each, and Statements for the Three Months Ended September 30, 1907, and 1906, Showing Passenger and Freight Earnings, Expenses, and Charges Divided Between State and Interstate Business.

Method of dividing expenses and charges between freight and passenger business is not shown. Expenses are divided between State and Inter-State business on basis of earnings of each class of business.

Summary of Intrastate Passenger Business, as Shown by Statements for the Three Months Ended September 30.

	1907.	1906.	Increase.
Revenue from Passengers.	$56,329.47	$50,959.63	$5,369.84
Excess Baggage, Mail, Express, etc.	24,531.16	24,162.71	368.45
Total	$80,860.63	$75,122.34	$5,738.29

Operating Expenses:			
Maintenance of Way and Structure	$31,779.37	$28,871.00	$2,908.37
Maintenance of Equipment	9,984.00	7,375.10	2,608.90
Other Expenses.....	28,706.04	27,955.42	750.62
Total	$70,469.41	64,201.52	6,267.89
Net Earnings.....	$10,391.22	$10,920.82	$529.60*
Taxes and Rentals.....	1,647.99	1,624.68	23.31
Available for Interest and Dividends	$8,743.23	$9,296.14	$552.91*

*Decrease [Red ink in copy.]

162 Afterwards, to-wit, on the 13th day of June, 1908, a Notice was filed. Said notice is in words and figures as follows, to-wit:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General, et al., Defendants.

And also

In Equity.

RAILROAD COMPANIES
vs.
HERBERT S. HADLEY, Attorney General, et al., Being Cases Numbered 2989, 2990, 2991, 2995, 2997, 3001, 3002, 3003 and 3006.

Notice.

Complainants in above numbered cases will, upon June 13th, 1908, at 10 o'clock a. m., or as soon thereafter as counsel can be heard, make application to the court to set down for hearing the applications for temporary injunctions therein pending.

FRANK HAGERMAN,
Solicitor for Complainants.

Received copy of above notice this June 8th, 1908.

HERBERT S. HADLEY,
Attorney General;
JOHN KENNISH,
SANFORD B. LADD,
W. H. LEHMANN,
Solicitors.

163 Afterwards, to-wit, on the 21st day of September, 1908, the Master's Return to order of June 13, 1908, was filed. Said Master's Return is in words and figures as follows, to-wit:

Circuit Court of the United States, Western Division of the Western District of Missouri.

No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY
vs.
HERBERT S. HADLEY, Attorney General, et al.

Also

RAILROAD COMPANIES
vs.
HERBERT S. HADLEY, Attorney General, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998 2999, 3000, 3001, 3002, 3003, 3004 and 3006.

Master's Return to Order of June 13, 1908, *With all Testimony Taken.*

To the Honorable the Judges of said Court:

In obedience to the order entered in the above mentioned cases, bearing date of June 13, 1908, the undersigned Special Master herewith returns all the testimony taken before him in the three cases in which testimony was taken, viz. the cases of the Missouri Pacific Railway Company, the Chicago, Burlington & Quincy Railway Company, and the Wabash Railroad Company, together with all the exhibits referred to in said testimony, and being all the testimony taken in any of the said eighteen cases.

Respectfully submitted,

F. L. SCOFIELD,
Special Master.

Hannibal, Mo., September 18th, 1908.

164 Afterwards, to-wit, on the 5th day of October, 1908, the following order was filed and entered of record, to-wit:

In the Circuit Court of the United States, Western District of Missouri.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General, et al., Defendants.

And also

RAILROAD COMPANIES
against
HERBERT S. HADLEY, Attorney General, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004, 3006, all in Equity in said Court.

Orders.

These cases come on for further hearing this October 5th, 1908, pursuant to the orders in all said cases made June 13th, 1908.

And the Court orders that each, all and every of said eighteen (18) cases be and the same are hereby continued until November ninth (9th) A. D. 1908, at ten O'clock A. M., at which time all of said cases will be called for trial, and the trials will then proceed from day to day until concluded. And said cases will be heard and decrees rendered on the evidence heretofore taken before the Special Master, and on such oral testimony and documentary evidence as may be offered by any of the parties to said cases pursuant to General Equity Rules 67 as amended. The evidence taken in any one of said cases shall be used in each, all and every of the other seventeen (17) cases in so far as the same will be pertinent or garmane.

165 Said cases wil- be called and heard in the numerical order given said cases by the clerk; that is to say, the case with the lowest numerical number to be first heard, and the next lowest number next heard, and so on until all said cases are heard.

All agreements between any of the parties in any of said cases, whether such agreements are recited in orders of this court or by the Special Master, or whether such agreements are otherwise in writing, or verbally made, are hereby cancelled and will not be regarded by the Court and future agreements if any will only be considered by the Court when reduced to writing and signed by the parties and filed with the clerk in said case or cases.

However, the orders, made in said cases June 13th, 1908, and the agreements therein recited are fully ratified and confirmed except only as to the change of date for hearing from October 5th, 1908, to November 9th, 1908.

And the applications for temporary injunction are continued until November 9th, 1908, or until such later time as said applications may be presented, and the court may be able to hear the same.

Done in open court this October 5th, 1908.

(Signed) **SMITH McPHERSON, *Judge.***

Afterwards, to-wit, on the 14th day of December, 1908, the following order was filed and entered of record, to-wit:

UNITED STATES OF AMERICA, *sct:*

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD CO.,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al.

Also

166 In Equity.

RAILROAD COMPANIES
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004 and 3006.

MONDAY, *November* 9, *A. D.* 1908.

This day come the parties by their solicitors, the complainant by W. F. Evans, Esq., and Frank Hagerman, Esq., and the defendants by the Honorable Herbert S. Hadley, F. H. Lehmann, Esq., and Sanford B. Ladd, Esq. Thereupon this cause coming on regularly for final hearing, evidence on the part of complainant is begun and the same not being concluded at the hour of adjournment, further proceedings are postponed until tomorrow morning.

(Signed) SMITH McPHERSON, *Judge.*

Afterwards, to-wit, on the 14th day of December, 1908, the following order was filed and entered of record, to-wit:—

UNITED STATES OF AMERICA, *sct:*

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD CO.,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al.

Also

In Equity.

RAILROAD COMPANIES
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004 and 3006.

TUESDAY, *November* 10, 1908.

Now on this day again come the parties by their solicitors. Thereupon the hearing of evidence on the part of complainant is proceeded with and the same not being concluded at the hour
167 of adjournment, further proceedings are postponed until tomorrow morning.

(Signed) SMITH McPHERSON, *Judge.*

Afterwards, towit, on the 14th day of December, 1908, the following order was filed and entered of record, to-wit:—

UNITED STATES OF AMERICA, *sct:*

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD CO.
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al.

Also

In Equity.

RAILROAD COMPANIES
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004 and 3006.

WEDNESDAY, *November* 11, 1908.

Now on this day again come the parties by their solicitors. Thereupon the hearing of evidence on the part of complainant is proceeded

with and the same not being concluded at the hour of adjournment, further proceedings are postponed until tomorrow morning.

(Signed) SMITH McPHERSON, *Judge.*

168 Afterwards, to-wit, on the 14th day of December, 1908, the following order was filed and entered of record, to-wit:—

UNITED STATES OF AMERICA, *sct:*

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD CO.
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al.

Also

In Equity.

RAILROAD COMPANIES
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004 and 3006.

THURSDAY, *November* 12, 1908.

Now on this day again come the parties by their solicitors. Thereupon the hearing of evidence on the part of complainant is proceeded with and the same not being concluded at the hour of adjournment, further proceedings are postponed until tomorrow morning.

(Signed) SMITH McPHERSON, *Judge.*

Afterwards, to-wit, on the 14th day of December, 1908, the following order was filed and entered of record, to-wit:—

UNITED STATES OF AMERICA, *sct:*

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD CO.

169 vs.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al.

Also

In Equity.

RAILROAD COMPANIES

vs.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004 and 3006.

FRIDAY, *November* 13, 1908.

Now on this day again come the parties by their solicitors. Thereupon the hearing of evidence on the part of complainant is proceeded with and the same not being concluded at the hour of adjournment, further proceedings are postponed until tomorrow morning.

(Signed) SMITH McPHERSON, *Judge.*

Afterwards, to-wit, on the 14th day of December, 1908, the following order was filed and entered of record:—

UNITED STATES OF AMERICA, *sct:*

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD CO.

vs.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al.

Also

In Equity.

RAILROAD COMPANIES

vs.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004 and 3006.

SATURDAY, *November* 14, 1908.

Now on this day again come the parties by their solicitors.

170 Thereupon the hearing of evidence on the part of complainant is proceeded with and the same not being concluded at the

hour of adjournment, further proceedings are postponed until Monday, December 14th.

(Signed) SMITH McPHERSON, *Judge.*

Afterwards, to-wit, on the 15th day of December, 1908, the following order was filed and entered of record, to-wit:—

UNITED STATES OF AMERICA, *sct:*

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD CO.

vs.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al.

Also

In Equity.

RAILROAD COMPANIES

vs.

HERBERT S. HADLEY, Attorney General of the State of Missouri. et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004 and 3006.

Now on this day again come the parties by their solicitors. Thereupon the hearing of evidence on the part of complainant is proceeded with and the same not being concluded at the hour of adjournment, further proceedings are postponed until tomorrow morning.

(Signed) SMITH McPHERSON, *Judge.*

Monday, December 14, 1908.

Afterwards, to-wit, on the 16th day of December, 1908, the following order was filed and entered of record:—

171 UNITED STATES OF AMERICA, *sct:*

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD CO.

vs.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al.

Also

In Equity.

RAILROAD COMPANIES

vs.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004, and 3006.

Now on this day again come the parties by their solicitors. Thereupon the hearing of evidence on the part of complainant is proceeded with and the same not being concluded at the hour of adjournment, further proceedings are postponed until tomorrow morning.

(Signed) SMITH McPHERSON, *Judge.*

Tuesday, December 15, 1908.

Afterwards, to-wit, on the 17th day of December, 1908, the following order was filed and entered of record, to-wit:

UNITED STATES OF AMERICA. *sct:*

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD CO.

vs.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al.

Also

In Equity.

RAILROAD COMPANIES

vs.

172 HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004, and 3006.

Now on this day again come the parties by their solicitors. Thereupon the hearing of evidence on the part of complainant is proceeded with and the same not being concluded at the hour of adjournment, further proceedings are postponed until tomorrow morning.

(Signed) SMITH McPHERSON, *Judge.*

Wednesday December 16, 1908.

Afterwards, to-wit, on the 18th day of December, 1908, the following order was filed and entered of record, to-wit:

UNITED STATES OF AMERICA, *sct:*

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD CO.

vs.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al.

Also

In Equity.

RAILROAD COMPANIES

vs.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004, and 3006.

Now on this day again come the parties by their solicitors. Thereupon the hearing of evidence on the part of complainant is pro-

ceeded with and the same not being concluded at the hour of adjournment, further proceedings are postponed until tomorrow morning.

(Signed) SMITH McPHERSON, *Judge.*

Thursday, December 17, 1908.

173 Afterwards, to-wit, on the 19th day of December, 1908, the following order was filed and entered of record, to-wit:

UNITED STATES OF AMERICA, *sct:*

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD CO.
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al.

Also

In Equity.

RAILROAD COMPANIES
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004, and 3006.

Now on this day again come the parties by their solicitors. Thereupon the hearing of evidence on the part of complainant is proceeded with and the same not being concluded at the hour of adjournment, further proceedings are postponed until tomorrow morning.

(Signed) SMITH McPHERSON, *Judge.*

Friday, December 18, 1908.

Afterwards, to-wit, on the 21st day of December, 1908, the following order was filed and entered of record, to-wit:

UNITED STATES OF AMERICA, *sct:*

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD CO.

vs.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al.

174 Also

In Equity.

RAILROAD COMPANIES

vs.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004, and 3006.

This day again come the parties by their attorneys. Thereupon evidence on the part of the complainant, St. Louis & San Francisco Railroad Co., is concluded and further proceedings are postponed until next Tuesday morning at nine o'clock.

(Signed) SMITH McPHERSON, *Judge.*

Saturday, December 19, 1908.

Afterwards, to-wit, on the 22nd day of December, 1908, the following order was filed and entered of record, to-wit:

UNITED STATES OF AMERICA, *sct:*

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD CO.

vs.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al.

Also

In Equity.

RAILROAD COMPANIES

vs.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004, and 3006.

Now on this day again come the parties by their solicitors. Thereupon the hearing of evidence on the part of complainant is pro-

ceeded with and the same not being concluded at the hour of adjournment, further proceedings are postponed until tomorrow morning.

(Signed) SMITH McPHERSON, *Judge.*

Tuesday, December 22, 1908.

175 Afterwards, to-wit, on the 23rd day of December, 1908, the following order was filed and entered of record, to-wit:

UNITED STATES OF AMERICA, *sct:*

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD CO.
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al.

Also

In Equity.

RAILROAD COMPANIES
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004, and 3006.

This day again come the parties by their attorneys. Thereupon further evidence upon the part of the defendants is heard and the same not being concluded at the hour of adjournment, further proceedings are postponed until Monday, December 28, 1908, at nine o'clock.

(Signed) SMITH McPHERSON, *Judge.*

Wednesday, December 23, 1908.

Afterwards, to-wit, on the 28th day of December, 1908, the following order was filed and entered of record, to-wit:

UNITED STATES OF AMERICA, *sct:*

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD CO.
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al.

176 Also

In Equity.

RAILROAD COMPANIES
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004, and 3006.

This day again come the parties by their solicitors. Thereupon the hearing of evidence is proceeded with and further proceedings are postponed until tomorrow morning.

(Signed) SMITH McPHERSON, *Judge.*

December 28, 1908.

Afterwards, to-wit, on the 29th day of December, 1908, the following order was filed and entered of record, to-wit:

UNITED STATES OF AMERICA, *sct:*

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD CO.
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al.

Also

In Equity.

RAILROAD COMPANIES
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004, and 3006.

This day again come the parties by their solicitors. Thereupon the hearing of evidence is proceeded with and further proceedings are postponed until tomorrow morning.

(Signed) SMITH McPHERSON, *Judge.*

December 29, 1908.

177 Afterwards, to wit, on the 30th day of December, 1909, Complainants' Requests for Findings of Fact was filed. Said Requests are in words and figures as follows, to-wit:

Complainants' Requests for Findings of Fact.

1. The complainants are the eighteen railroad corporations owning and operating lines of railway in Missouri, engaged generally in doing therein with the same property, the entire state and interstate railroad business. With the exception hereinafter stated as to the St. Louis & Hannibal and the Kansas City, Clinton & Springfield, they constitute great trunk lines of railroads, carrying in and through Missouri the commerce of the country, state and interstate, reaching and connecting various commercial centers like Chicago, St. Louis, Kansas City, Omaha, Denver, St. Paul, Memphis, New Orleans and Galveston. Some of them like the Atchison, Topeka & Santa Fe and the Chicago, Rock Island & Pacific operate through trans-state trains, running from Chicago to the Pacific Ocean. All operate, in connection with other roads at connecting points and large centers so as

to carry all the traffic of the state, freight and passenger, not only that which is state but also that which is interstate, and that which is destined to and from other roads and other states. The interstate business may originate or terminate in the state, or in some instances both there originate and terminate or it may pass through the state with origin and destination both outside thereof. The St. Louis & Hannibal Railway is located wholly within the state, extending from Hannibal, Missouri, through a valuable and populous part of the state, to a point upon the Wabash Railway and is the only one of the complainants, the line of which does not cross the state line. The Kansas City, Clinton & Springfield Railway extends from Olathe, Kansas, (a small town about 20 miles from Kansas City, Missouri,) for a distance of about eleven miles to the state line from whence it runs through the southwestern part of the state but not as in
178 the case with the other railways reaching with its own trains any of the basing points or great commercial or market centers of the state.

2. The same properties, trains and facilities are necessarily used by each company, in conducting both the state and interstate business. It would not be practicable to operate in any other way. If separate cars or trains were required to be operated for the state and interstate business or separate facilities used for each, no one of the complainants could for the business of any or all classes in this state pay operating expenses, the public would be greatly inconvenienced, and enormous investments would be required in order to meet changed conditions. It is absolutely essential to the safety, convenience and economy of passengers and shippers for the business to be conducted as it is, without any attempted separation in conducting upon the same trains and with the same facilities both the state and interstate business.

3. Missouri is peculiarly located so far as concerns the question whether the fixing a state rate directly affects an interstate rate. The state is midway between the Great Lakes and the Gulf of Mexico, and midway between the Atlantic and Pacific Oceans. The vast quantities of traffic, and volumes of travel between the east and west and north and south necessarily cross the entire state. Two great rivers bound the state upon the east and west. Upon these rivers are located great markets and commercial centers. Those at Kansas City being the largest between the Mississippi River and the Rocky Mountains. All freight rates from the east to the west and vice versa are made up of a rate to and from these rivers plus the rate across the state. This has always been so and whatever the reason therefor, as a practical railway problem will always be so if intelligent, experienced and practical railway men are permitted to fix rates upon a fair, reasonable and intelligent basis. The river points, therefore, have become and are rate basing centers. Great cities and markets have been built up by reason of and upon the faith of this fact. At such points great railroad properties have been acquired and exten-
179 sive terminals provided in view thereof. In many instances the railways there terminate. If a different method were adopted a chaotic condition would be created, business of these cities and mar-

kets would be seriously and unduly disturbed and embarrassed and investments there made large- affected. The actual result is that the short line mileage across the state actually controls and fixes the freight rate by every other railway, no matter what the distance or points of origin and destination may be. From Hannibal to St. Joseph, Missouri, is 198 miles by the Chicago, Burlington & Quincy Railway. This is the shortest rail distance between the rivers. From St. Louis to St. Joseph it is at least 300 miles, to Kansas City 280 and upward. Whenever a freight rate per mile is fixed for the 198 miles, the short route between the rivers, the total rate between all Mississippi and Missouri River points must conform thereto, even though the distance be 300 or more miles. This situation applies to every competitive point between the rivers of which there are many of magnitude and importance. The traffic between St. Louis and Missouri river points, both state and interstate, is enormous. Every railway carrying freight must be at the expense of carrying it from 280 to 300 or more miles, yet receive therefor a rate based upon a distance of 198 miles. Unless it should do so it would not be able to handle enough freight between river points to justify the running of trains. Unless the rates were so fixed no substantial business would be done between the river points because every shipper to or from the east would be compelled to ship by the short line. St. Louis merchants could not compete for western business. In the passenger traffic the universal rule is that the short line between any two stations fixes and establishes the rate. In other words, the rate being fixed per mile, the longer route will not be able to carry passengers between any two points if its total rate exceeds the short line rate. In actual railway operation the state line is wholly arbitrary. Unless the mile-
180 age rate is the same, passengers will, if the state rate be lower than the interstate, buy tickets or pay fare to a state line station and there provide themselves anew with tickets thus making an interstate journey partly state. Experience has demonstrated this to be noticeably true. In July and August, 1907, when a two cent fare was in force in Missouri upon state business and three cents upon interstate this practice became quite general. It became absolutely necessary as a practical railroad question to put in force the same rate for state and interstate travel; otherwise it would have become impossible to keep track of a large part of the interstate travel and a large unnecessary expense been incurred by the work imposed at the state line stations. For these and many other reasons shown by the evidence, including those mentioned in paragraph 4, it is a fact that no mileage state rate, for freight or passengers, extending across the state of Missouri, can be established which does not actually and immediately directly affect the interstate rate, not only in but out of the state. It therefore, must as a fact, be said that the rates fixed by the laws complained of in the bills, do directly and immediately affect and regulate interstate commerce.

4. Two of the great trunk lines in Missouri are the Missouri Pacific and the Chicago, Burlington & Quincy Railways. Both extend from St. Louis to St. Joseph,—the Burlington lines between these points are wholly within the state; those of the Missouri Pacific pass

out of Missouri at Kansas City, into Kansas, leaving that state at Atchison, coming again into Missouri. All traffic over the Missouri Pacific from St. Louis to St. Joseph is interstate. If the state rate, freight or passenger, be lawfully fixed the Burlington must conform thereto on its St. Louis and St. Joseph business. When it so does this rate must be met by the Missouri Pacific or else the latter will get none of the business. This situation is applicable to all the Missouri Pacific business between St. Joseph and Kansas City and all
181 points east thereof. The Burlington and other roads as direct and as connecting carriers compete therefor. A very large and substantial part of the business of the Missouri Pacific is carried from St. Joseph to Kansas City and St. Joseph and points between and is thus affected. The same situation exists as to other companies. The Chicago Great Western Railway between St. Joseph and Kansas City runs from Missouri, thence into Kansas, and back into Missouri, making the business interstate. The lines of the Burlington and St. Joseph & Grand Island companies between these points are wholly within the state. The lines of the St. Louis & San Francisco and Kansas City Southern companies between Kansas City and Joplin and the great lead and zinc mining districts of Missouri, start from Kansas City, Missouri, extend into Kansas, and thence back into Missouri, thus making the journey interstate. The Missouri Pacific line between these points is wholly state. The Missouri, Kansas & Texas also runs from Missouri into Kansas and back into Missouri, competing with lines wholly in the state. In each of these instances a very large and substantial part of the business of each of said companies originates and terminates in Missouri yet by passing in its journey out of the state is interstate. In each instance if the competing line wholly in the state is by state law compelled to lower its rate, those doing such interstate business must likewise reduce their rates between the same state points or do none of the business. All the complainants have joint tariffs, with the others, doing one with the other, a through connecting business. The laws complained of in the bills do therefore directly affect and interfere with a substantial part of traffic of the state which is interstate commerce originating and ending in the state, particularly much of that kind upon the lines of the Missouri Pacific, Chicago Great Western, St. Louis & San Francisco and Missouri, Kansas & Texas companies. The laws complained of are general in their nature, making neither classification nor exception. So by reason of the peculiar location of many of the large roads in Missouri a unique situation is presented whereby wholly
182 independent of the facts set forth in paragraph 3, state rates certainly directly and immediately affect interstate traffic both freight and passenger. So great an amount of interstate business is affected thereby that if it was permitted to be free from state regulation, and the other companies in the state refused to conform to the rates fixed by the laws by the bills herein questioned, they as competitors, whether original or connecting carriers, would lose so much state business that they would be compelled to carry at an actual loss that which remained of that class of traffic.

5. Much difficulty in the cases has been obviated by complainants

making up and delivering to defendants, from time to time, statements showing the earnings and expenses for certain periods, which seem to have been treated by the parties as sufficiently illustrative of the situation to enable a fair determination of the controversy to be had. Complainants have extended to defendants every facility, given them the fullest opportunity, and granted them every possible courtesy, so that any experts for defendant have had every opportunity to call for any figures and to make up any statement upon any theory desired. Inasmuch as the same periods of time, in the various statements submitted, were adopted by both parties, the findings as to each company will follow along the same line, and actually mean that such period should be considered as representative of the situation generally. Inasmuch as the freight act of 1907 covered the same commodities as the Acts of 1905 but allowed an increased earnings, it follows as was conceded by defendants at the trial, if the freight act of 1907 was confiscatory, that of 1905 was likewise confiscatory but to a greater degree. It must therefore be said that the rates fixed by the laws complained of in the bills do, in fact, directly and immediately affect interstate rates and directly regulate a large and substantial part of interstate commerce of the state and interstate carriage, freight and passenger, upon the Missouri Pacific, Chicago & Great Western, St. Louis & San Francisco, Kansas City Southern and Missouri, Kansas & Texas Railways and their connecting carriers.

183 6. The earnings in a state, from state and interstate business, can be ascertain with a reasonable degree of certainty from the way-bills, tickets and cash fares. The books and papers of complainants are and always have been so made and kept that it is a mere matter of expense, though considerable, and detail work, though extensive, to make the ascertainments. The freight earnings consist of earnings from transportation and from miscellaneous services, such as switching, demurrage, storage and track rentals. Passenger earnings are those from passenger fares and miscellaneous services, such, for instance, as mail, express and excess baggage.

7. No serious difference has arisen in the separate cases as to the ascertainment of the expense of doing the entire passenger, freight or miscellaneous business in the state. So, with a reasonable degree of certainty, and with little controversy, this division can be and has been made. Inasmuch as these expenses are incurred by the use of the same properties, car tracks and facilities, there is not and never has been any certain known fixed rule or method by which, to a mathematical certainty, these different expenses so separated can be divided, as between state and interstate business. The method to be adoped in making the division was the chief serious controversy at the trial. Complainants claim that the division should be upon the revenue basis, in which way there can in the first instance, be assigned to each class of business, freight, miscellaneous freight, passenger and miscellaneous passenger, or to all or any of them combined, a reasonable and fair amount as state and inter-state expenses respectively to which should be added such sum as would represent the extra cost of doing state over interstate business. The defendants

claim that the division should be, for freight, upon the ton-mile basis, and for passenger, upon the passenger-mile basis, and that miscellaneous freight earnings and expenses should be included in freight and miscellaneous passenger earnings in those of passenger. As the revenue proportion is, in most instances, nearly twice as much as the ton-mile proportion, the reason for the difference is apparent. By the revenue basis is meant assigning as expense
184 of state business, of any particular kind or kinds, such proportion of the total expense in the state on that class of business as the earnings from that class of state business bears to all the earnings (state and interstate) from the same class; or, as often put, ascertain what proportion all expenses are of all earnings, and then multiply the state earnings of any class thereby, thus finding a sum which would equal the expenses to be there assigned. By the ton-mile basis is meant the assignment to state freight expenses such proportion of all freight expense as the number of tons per mile of state freight bears to the total ton-miles of all freight hauled in the state. By the passenger-mile basis is meant the assignment as state passenger expenses such proportion of all passenger expenses as the number of passengers in state business carried one mile bears to the whole number of passengers (state and inter-state) carried one mile.

Another method of division of freight expense is upon the basis of the number of tons carried, regardless of distance. In results there is little difference, as a division on this basis is practically the same as that which is shown by the revenue basis. Neither party has adopted it as a basis of division.

8. There being no method by which the division of expenses as between state and inter-state, can be made to a mathematical certainty, calculations have been made upon every reasonable basis, and a determination reached, in the light of all the evidence, of a reasonable sum, in money, which should be actually charged as the expense of doing each class of state business. To this should be added the extra cost of doing the state business. The sums hereinafter found were first actually ascertained by a division upon a revenue basis. Then, after considering all things, they were and are adopted as the proper sums to reasonably represent an actual fair apportionment of expenses as between state and inter-state business. Any apportionment of freight expenses, upon a ton-mile basis would charge too small an amount as state expense. This would
185 make necessary the use of a multiple of extra cost, large enough to make the sum total of state freight expense equal that hereinafter accurately found to reasonably represent the cost as it ought from the evidence to be found. Any apportionment of passenger expense, upon the passenger mile or any other basis which would not make the state passenger expense equal in dollars the sum hereinafter found, would be unfair and unjust.

9. All things considered, the evidence duly weighed, there being no abnormal feature, the cost of doing the different classes of state business, ascertained as between state and interstate, upon a revenue basis, brings a result in dollars in Missouri which is fair, just, rea-

sonable and representative. That method of ascertainment is much better and more satisfactory than any other which has, by anyone, been suggested. If the law be that some one theory must be adopted, then the revenue basis would be and is hereby accepted as correct. However, in these cases, although the ascertainment is actually made upon the revenue basis, the figures, when ascertained, have been considered in the light of all the facts and circumstances in evidence, and then in and of themselves and independently of their method of ascertainment, also adopted as fairly and justly representing the cost and expense of doing each class of state business.

10. There is an extra cost and expense of doing state over interstate business, both as to freight and passenger. This extra cost is as to each complainant, for freight, much in excess of fifty per cent, of all freight expense, and for passenger in excess of twenty-five per cent. of all passenger expense. While the extra cost is much in excess of these figures, yet, for the purpose of this case, they may, as to each complainant, be adopted as the minimum. How much more the extra cost is, need not be now determined, because at the minimum figures thus fixed, the rates in question are, in view of the case, unreasonable and confiscatory. If the ton-mile method of apportionment of freight expenses were adopted, the multiple of extra cost of doing each class of state business would be fixed
186 as such figures as would make the entire expense as increased, equal to that hereinafter found, because, the total amount as found, regardless of the method of finding same, being that which fairly represents the minimum actual cost and expense of doing such state business.

11. After ascertaining the cost of doing the different classes of state business, and deducting same from the earnings there should be and there is deducted from the state freight earnings of each com-- be and there is deducted from the state freight earnings *of each complainant such sum as would equal its diminution of earnings* upon the commodities covered by the act, if the rates thereon fixed thereby had been charged. This has been done as to each complainant.

12. In the case of each complainant, other than the St. Louis & Hannibal Railway Company, and Kansas City, Clinton & Springfield Railway Company, the earnings should be sufficient, in any event, to fully meet its proportion of the interest upon the bonded indebtedness, there being nothing out of the ordinary as to such indebtedness, and nothing to indicate that the property was unduly bonded. Such interest has been regularly paid for years and there is nothing to indicate any improper bonding. The proportion of the property assignable to any of the state traffic, upon a revenue basis, is actually worth more than enough to justify such return. The proportions of the property of the St. Louis & Hannibal and the Kansas City, Clinton & Springfield respectively, assignable to any of the state traffic, are worth enough to justify some substantial return. However, irrespective of this finding and eliminating any question of interest, the rates in question are as hereinafter shown

insufficient to make a fair and reasonable return upon the value of the portion of the property of each complainant devoted to the use.

13. Each class of business of each complainant should have assigned to it its fair proportion of the value of the entire
187 property in the state as that upon which it is entitled to a return. Such a division hereafter made, is upon a revenue basis. The result reached thereby is so fair, just and reasonable that they are, in view of all the facts, adopted, regardless of the method of ascertainment. There has been fixed a minimum valuation for the railway property in the state. The property is worth at least that much. There is and should be assigned to each class of state business such proportion of such valuation as the gross state revenue of that class, bears to the gross revenue in the state. When this is done there is ascertained a sum which, in any event, is, considering all of the evidence, and regardless of the method by which the result is reached, the very least value upon which a reasonable return should be had as to that class of business. These figures, as to values, are probably less than the actual values, but for the purposes of the cases are taken as figures representing a minimum valuation upon which at least a fair return should be had, if any, because the rates in question at such valuation are confiscatory. It is therefore unnecessary to consider how much more the property is worth.

14. There are, therefore, in the cases tried, findings made and hereinafter set forth, showing: (*a*) All earnings, state and interstate, freight, miscellaneous freight, passenger and miscellaneous passenger; the proportions which state and interstate freight and passenger earnings (exclusive of miscellaneous) bear to all combined state and interstate freight and all passenger earnings (including miscellaneous) respectively, and that which they bear to all earnings in the state. (*b*) Miscellaneous freight and miscellaneous passenger earnings, (undivided as between state and interstate) with the proportions they are of all earnings and of, respectively, all freight and passenger. (*c*) All expenses, divided in proportion to revenue, as between all kinds of freight and passenger business, including miscellaneous, but *in*divided as between state and interstate. (*d*) A deduction from all state freight (exclusive of miscellaneous), of such proportion of the expenses of all freight and all passenger respect-
188 ively, as the freight and passenger earnings respectively, exclusive of miscellaneous, bore to all freight and passenger earnings (*e*) A like deduction of extra cost of doing such business respectively, including miscellaneous. (*f*) A deduction from freight earnings of sums equalling the diminution which would have been caused if the rates fixed by the act had been charged. (*g*) The value of that portion of complainants' property assignable to the particular traffic. This is ascertained by taking, for each class of business, of the entire value in the state such proportion as the earnings upon that portion of the business bear to all the earnings in the state.

The results thus reached and the sums finally ascertained irrespective of the methods by which the apportionments are made, in the light of all the facts and circumstances in evidence, are

fair just and reasonable, and such as ought, in each instance, to be fixed. Anything in the way of a return less than six per cent. interest upon the part of the property assignable to any traffic in question is unreasonable and confiscatory.

15. The complainants made out and served their statements upon defendants, not dividing the miscellaneous as between state and interstate, for the reasons therein thus set forth:

"Inasmuch as differences might arise between complainant and the state as to the method of apportioning miscellaneous freight, and mail, express and miscellaneous passenger earnings, and as no question as to such earnings is here involved, same have to avoid confusion and unnecessary controversy, been left undivided as between state and interstate earnings."

No request was ever made for such a division, though it could have been made by complainants had a request been made therefor by defendants. The actual division could have been made by defendants had they so desired. If an accurate division were necessary it would even now be called for, regardless of the time necessary to be devoted to the work, though neither party is entitled to have the case delayed to obtain the information. To do so would make
189 necessary a possible change in some percentages, though not enough to change the result. As neither party thought an actual division was necessary, a court could well assume as the proofs clearly show, that if made, the final result of the case would not be changed thereby. As a matter of fact it would be fairer and better to deal alone with the effect of the laws in question upon strictly freight and passenger business. At the trial, however, the state's experts made an estimated division of these miscellaneous earnings, both freight and passenger, as between state and interstate, by arbitrarily assigning the same in the proportion of the revenue received from purely freight and purely passenger earnings respectively. This was an arbitrary basis, unwarranted in fact and made in a method which assigned entirely too great a proportion to the state business and improperly and unnecessarily enlarged the state earnings. It is, therefore rejected. From the figures hereinafter set forth, it will be seen that the miscellaneous earnings are but a small proportion of all earnings, especially of the freight. To avoid confusion in making new tabulations, the arbitrary division made by the state's experts may be assumed to be correct, still this would make no difference in the result of the cases. This because there should be charged against these earnings a sum equalling the revenue proportion of all expense of freight and passenger respectively, plus an extra cost of doing state business. The sums ascertained in this way would be the fair, just and equitable charge as the minimum expense of doing such business. When so made there should be assigned as the valuation upon which there should be a return, such proportion of the entire value as the respective earnings from miscellaneous freight and passenger, bear to all earnings. When this is done it is apparent that no fair return is received upon this class of business. Hence, if the miscellaneous earnings were added to the freight and passenger earnings respectively, so as to

consider all freight as a whole, and also all passenger as a whole, the result reached will not and could not be changed. Had a
190 desire been, in proper time, expressed for an accurate division of miscellaneous earnings as between state and interstate, according to the facts, it would have been ascertained, so that the loss would have been shown, considering freight and passenger earnings alone, and also such loss considering the miscellaneous with each. However, the miscellaneous passenger business consists in the main of mail and express, and it is difficult to see why, in ascertaining the losses or gains under a two cent fare law there should be included either losses or gains from the miscellaneous earnings, especially when the main portion of the earnings are more in the nature of freight earnings from a passenger service.

16. The expense of doing all the state business, when ascertained on the revenue basis, estimating the extra cost of doing the state freight business at the minimum of at least 50 per cent, and the passenger business at the minimum of at least 25 per cent, shows a sum which would be fair and reasonable to adopt as the cost of doing the entire state business. So that, if all the state business be considered as a whole and be done at the rates now in existence and those fixed by the laws questioned in the bills, there is no doubt that there is no reasonable or compensatory return upon the value of the portion of the property assignable to the whole of the state traffic. It is not here necessary to determine whether, as many competent railroad managers say, that no state rates are compensatory. It is true that such will be the result in Missouri, if the laws in question are enforced. There is a reason why, there, it is true. That state is peculiar in its central location, its class of business, and the location of its cities. The short line between the rivers, as a transportation problem, necessarily fixes the rate for the enormous freight traffic passing to and from the east and the west. There are located at the two rivers two of the great markets of the United States. Freight rates are, by state laws and state commissions, fixed to a large extent upon a mileage basis. The result is that the vast traffic between Kansas City and St. Louis is done at the expense of
191 a carriage of 280 miles and upwards, whereas, the compensation of the carrier is fixed upon the theory of a carriage of 198 miles. So with the passenger business. There are many large centers upon each side of the state, particularly the great cities, St. Louis, Kansas City and St. Joseph. There are many large competitive cities in the interior. There are great and marked differences in the respective distances between competitive points on the many different lines in the state. As passenger rates are fixed by law upon the mileage basis the necessary result is that every company has numerous instances in which it is put to the expense of a carriage of a long distance but is paid at a rate for a much shorter distance. Taking these facts into consideration, together with the extra cost of doing state business, it is a fact, whether all state business be treated as a whole or subdivided into classes, the rates now in existence and those fixed by the laws in question, fail to bring any fair

or substantial return; nothing like one-half of the rate of interest which is fixed by law.

17. The adoption of the two cent fare did not cause any substantial increase in travel. At first a great many persons rode as state passengers to and from the state line, so that the state obtained more revenue than that to which it was entitled. Any statement of the passenger business which includes July and August, 1907, is unduly fair to the state. However, state and interstate fares soon became the same, and the longer the period over which the figures are extended the greater will be the loss shown.

18. If the companies had, after the two-cent passenger rate went into effect, been permitted to charge the amount which they, prior thereto, actually received per passenger per mile, they would have received this much more money:

192

Name of road.	Period covered months.	From state passengers.	From inter-state passengers.
St. L. & S. F. R. R. Co.....	12	666,008.72	509,738.63
A. T. & S. F. Ry. Co.....	12	30,885.52	66,271.03
C. R. I. & P. Ry. Co. and St. L. K. C. & C. Ry. Co.....	12	124,469.14	111,178.60
K. C. So. Ry. Co.....	12	7,044.49	27,260.75
St. L. & H. Ry. Co.....	12	37,275.38	145.23
M. K. & T. Ry. Co.....	12	140,593.46	63,815.12
K. C. C. & S. Ry. Co.....	12	14,654.57	10,846.91
C. B. & Q. R. R. Co.....	12	394,878.77	261,556.41
C. G. W. Ry. Co.....	12	65,945.96	46,162.17

19. In the case of the St. Louis & San Francisco Railway there were included in the expenses sums paid as rentals under a lease of the Kansas City, Fort Scott & Memphis Railway. The common stock of the latter company is owned by the St. Louis & San Francisco, which operates the property under a lease, requiring it to pay to the holders of preferred stock of the Memphis as a rental a sum equal to a four per cent annual dividend thereon. There is nothing to impeach the fairness of the lease or its terms. It has been in existence for years. This rental has always been treated as an operating expense and not included in the fixed charges, nor included in the stock issue or bonded indebtedness or interest charge. It is therefore treated as it should be and in fact is, part of the expenses. The total amount charged in the accounts hereinafter set forth as part of the state freight expense is $8,428.56 and as part of the state passenger expense $7,443.68. If these items should be eliminated from the expenses, there would be no difference in the result.

20. The minimum values of the railway properties in the state belonging to and used by the complainants in Missouri are:

193

	Miles.	Value.	Value Per mile.
St. Louis and San Francisco, (1907)	1688.89	61,238,414.70	36,259.00
Atchison, Topeka & Santa Fe (1907)	348.31	15,091,212.00	43,326.00
Chicago Rock Island & Pacific, (1907)	515.48	19,102,507.59	37,058.00
Kansas City Southern (1908).	174.48	8,039,084.40	46,075.00
St. Louis & Hannibal (1907).	120.61	1,143,007.02	9,477.00
Missouri, Kansas & Texas (1908)	506.21	20,894,229.93	41,276.00
Chicago, Burlington & Quincy (1908)	1136.34	53,172,907.83	46,793.00
Kansas City Clinton & Springfield (1907)	151.01	2,380,222.48	15,762.00
Chicago Great Western (1907)	84.43	3,605,236.38	42,701.00

The sums thus found as the minimum values in all cases except those of the Kansas City Clinton & Springfield and St. Louis & Hannibal, are in fact the same as estimated by the assessing officers of Missouri. In the cases of those two companies it is one third less. Nevertheless the valuations thus found are, aside from and independently of the fact that they were estimates of the state found in view of all the facts and circumstances in evidence to be the minimum fair reasonable values of the properties.

21. There are now made and submitted, tables showing the earnings and expenses and assignable fixed charges and value of the complainants' property in the cases tried. From the expenses, even taxes and rentals are excluded, though probably they should not be. The periods over which the findings extend were, at the trial, adopted by the parties as fairly representative. They are in fact sufficiently fairly representative of the actual earnings and expenses, under ordinary and usual conditions, to be used as tests to determine whether the rates permit of a reasonable return upon the investment. They were supported by statements covering other years and longer periods. These tables treat state freight as distinct from miscellaneous freight and state passenger as distinct from miscellaneous
194 passenger, but do not charge against either freight or passenger earnings any expense of doing miscellaneous business, nor do they include in the assignable proportion of value or interest any part of that assignable to the miscellaneous business.

Nor do these tables include the St. Louis Southwestern, Missouri Pacific, St. Louis, Iron Mountain & Southern, Quincy, Omaha & Kansas City, Wabash, St. Joseph & Grand Island, Chicago, Milwaukee & St. Paul, or Chicago & Alton Railways. This because the cases of these companies, by stipulations, are to abide the result in other cases as to which findings are made. These tabulations contain the figures agreed upon by the experts for both sides if the court should adopt the results reached by a revenue basis.

(A) St. Louis and San Francisco R. R. Company.

(1) Period Covered.

The representative period taken by the experts upon both sides as to this company *are* for three months ending September 30th, 1907, and in that period the earnings and expenses were as set forth in subdivisions (1) and (2).

(2) Earnings and Percentages.

Character.	Amount.	Per cent of all freight earnings.	Per cent of all earnings.
Interstate freight	$2,214,002.82	76.94	54.68
State freight	577,192.84	20.04	14.26
Miscellaneous freight	86,814.57	3.02	2.14
Total	2,878,010.23	100.	71.08
		Per cent of all passenger earnings.	
Interstate passenger	368,687.43	31.49	9.11
State passenger	599,051.59	51.17	14.79
Miscellaneous passenger	203,077.28	17.34	5.02
Total	1,170,816.30	100.	28.92
Grand Total	4,048,826.53	.....	100.

195 (3) Expenses, Less Taxes & Rentals, Undivided Between State and Interstate.

All freight expense, including miscellaneous	$1,802,813.26
All passenger expense including miscellaneous	974,816.61

	Freight.	Passenger.
Percentage of expenses to earnings	62.64%	83.26%

(4) Taxes and Rentals.

Freight	$112,452.04
Passenger	38,979.63
Total	151,431.67

(5) State Earnings and Expenses.

	Freight.	Passenger.
State earnings above shown are	577,192.84	599,051.59
Expense of state business	361,644.33	498,716.20
Leaving	215,548.51	100,335.39
Less Taxes & Rentals (Par. 4)	22,760.29	20,097.90
Leaving	192,788.22	80,237.49
Deduct extra cost of state business freight estimated at 50%, passenger 25%	131,425.08	53,907.36
Leaving	61,363.14	26,330.13
Deduct diminution in earnings if the state freight rates in question had been charged	11,389.27	.....
Leaving as surplus	49,973.87	26,330.13

(6) Valuation.

Valuation of property in state is $61,238,414.70 of which 14.26% is assignable to state freight and 14.79% to state passenger business	2,183,149.48	2,264,290.38
Six per cent upon this part for the period covered is	130,988.97	135,757.42

(7) Return on Value.

In the way of a return upon the assignable value found in subdivision 6, the surplus shown in subdivision 5, is	2.29%	1.16%

(8) Interest Charge.

The actual interest charge paid, divided in the assignable proportions shown in subdivision 6 is	$116,792.45	$121,133.27

196 (B) ATCHISON, TOPEKA & SANTA FE R. R. COMPANY.

(1) Period Covered.

The representative period taken by the experts upon both sides as to this company *are* for six months ending Dec. 31, 1907, and in that period the earnings and expenses were as set forth in subdivisions (1) and (2).

(2) Earnings and Percentages.

Character.	Amount.	Per cent of all freight earnings.	Per cent of all earnings.
Interstate freight	$1,872,915.00	90.05	67.72
State freight	141,133.00	6.79	5.10
Miscellaneous freight	65,833.56	3.16	2.38
Total	2,079,881.56	100.	75.20
		Per cent of all passenger earnings.	
Interstate passenger	355,318.12	51.81	12.85
State passenger	104,370.19	15.22	3.77
Miscellaneous passenger	226,080.00	32.97	8.18
Total	685,768.31	100.	24.80
Grand Total	2,765,649.87	.....	100.

(3) Expenses, Less Taxes & Rentals, Undivided Between State and Interstate.

All freight expense including miscellaneous	1,382,738.65
All passenger expense, including miscellaneous	572,167.20

	Freight.	Passenger.
Percentage of expenses to earnings	66.48%	83.43%

197 (4) Taxes & Rentals.

Freight	32,361.50
Passenger	10,854.04
Total	43,215.54

(5) State Earnings and Expenses.

	Freight.	Passenger.
State earnings above (par. 2) shown are	141,133.00	104,370.19
Expense of state business	92,581.89	87,834.09
Leaving	48,551.11	16,536.10
Less Taxes & Rental	3,503.41	901.74
Leaving	45,047.70	15,634.36
Deduct extra cost of state business freight estimated at 50%, passenger 25%	41,859.55	17,947.71
Leaving	3,188.15	Def. 2,313.35
Deduct diminution in earnings if the state freight rates in question had been charged	13,885.87	.....
Leaving	Def. 10,697.72	Def. 2,313.35

(6) Valuation.

Valuation of property in state is $15,091,212.00, of which 5.10% is assignable to state freight, and 3.77% to state passenger business	$384,825.91	$284,469.35
Six per cent upon this part for the period covered is	23,089.35	17,068.16

(7) Return on Value.

In the way of a return upon the assignable value found in subdivision 6, the deficit shown in subdivision 5 is	Nothing %	Nothing %

(8) Interest Charge.

The actual interest charge paid, divided in the assignable proportions shown in subdivision 6 is	$17,934.56	$13,257.51

198 (C) CHICAGO, ROCK ISLAND & PACIFIC RY. COMPANY.

(1) Period Covered.

The representative period taken by the experts upon both sides as to this company *are* for three months ending September 30, 1907, and in that period the earnings and expenses were as set forth in subdivisions (1) and (2).

(2) Earnings and Percentages.

Character.	Amount.	Per cent of all freight earnings.	Per cent of all earnings.
Interstate freight	$665,228.16	79.38	59.86
State freight	150,953.68	18.02	13.58
Miscellaneous freight	21,815.70	2.60	1.96
Total	$837,997.54	100.	75.40
		Per cent of all passenger earnings.	
Interstate passenger	$113,524.21	41.53	10.22
State passenger	114,853.04	42.02	10.33
Miscellaneous passenger	44,980.08	16.45	4.05
Total	$273,357.33	100.	24.60
Grand Total	1,111,354.87	.....	100.00

(3) Expenses, Less Taxes and Rentals, Undivided Between State and Interstate.

All freight expense, including miscellaneous.....	$619,199.73
All passenger expense, including miscellaneous.....	317,633.62

	Freight.	Passenger.
Percentages of expenses to earnings.....	73.89%	116.20%

199 (4) Taxes and Rentals:

Freight	$ 74,227.43
Passenger	21,015.44
Total	$ 95,242.87

(5) State Earnings and Expenses.

	Freight.	Passenger.
State earnings above (par. 2) shown are.....	$150,953.68	$114,853.04
Expense of state business.....	111,579.80	133,469.65
Leaving.....	$39,373.88	Def. 18,616.61
Less taxes and rentals.....	13,375.78	8,830.68
Leaving.....	$25,998.10	Def. 27,447.29
Deduct extra cost of state business freight estimated at 50%, passenger 25%.....	41,919.82	17,501.61
Leaving.....	Def. $15,921.72	Def. 44,948.90
Deduct diminution in earnings if the state freight rate in question had been charged.....	$9,989.43	.....
Leaving	Def. $25,911.15	Def. $44,948.90

(6) Valuation.

Valuation of property in state is $19,102,507.59, of which 13.58% is assignable to state freight and 10.33% to state passenger business.	$648,530.13	$493,322.26
Six per cent upon this part for the period covered is.....	$38,911.81	$29,599.34

(7) Return on Value.

In the way of a return upon the assignable value found in subdivision 6, the deficit shown in subdivision 5 is.....	Nothing %	Nothing %

(8) Interest Charge.

The actual interest charge paid, divided in the assignable proportions shown in subdivision 6, is	$24,907.02	$18,946.21

200 (D) The Kansas City Southern Railway Company.

(1) Period Covered.

The representative period taken by the experts upon both sides as to this Company *are* for six months ending June 30, 1908, and in that period the earnings and expenses were as set forth in subdivisions (1) and (2).

(2) Earnings and Percentages.

Character.	Amount.	Per cent of all freight earnings.	Per cent of all earnings.
Interstate freight	$702,249.91	79.35	67.11
State freight	$38,748.76	4.38	3.70
Miscellaneous freight	$144,046.62	16.27	13.77
Total	$885,045.29	100.	84.58
		Per cent of all passenger earnings.	
Interstate passenger	$89,504.58	55.47	8.55
State passenger	$31,865.28	19.75	3.05
Miscellaneous passenger	$39,973.54	24.78	3.82
Total	$161,343.40	100.	15.42
Grand Total	$1,046,388.69	.....	100.00

(3) Expenses, Less Taxes and Rentals, Undivided Between State and Interstate.

All freight expense, including miscellaneous	$571,297.54
All passenger expense, including miscellaneous	141,432.56

	Freight.	Passenger.
Percentages of expenses to earnings	64.55%	87.66%

201 (4) Taxes and Rentals.

Freight	$22,331.70
Passenger	3,737.37
Total	$26,069.07

(5) State Earnings and Expenses.

	Freight.	Passenger.
State earnings above (par. 2) shown are	$38,748.76	$31,865.28
Expense of state business	25,022.83	27,932.93
Leaving	$13,725.93	3,932.35
Less taxes and rentals	978.13	738.13
Leaving	$12,747.80	3,194.22
Deduct extra cost of state business freight estimated at 50%, passenger 25%	11,711.60	5,346.15
Leaving	$1,036.20	Def. 2,151.93
Deduct diminution in earnings if the state freight rates in question had been charged	2,957.58	.....
Leaving	Def. $1,921.38	Def. $2,151.93

(6) Valuation.

Valuation of property in state is $8,039,084.40, of which 3.70% is assignable to state freight, and 3.05% to state passenger business	$148,723.06	$122,596.04
Six per cent upon this part for the period covered is	$8,923.38	7,355.76

(7) Return on Value.

In the way of a return upon the assignable value found in subdivision 6, the deficit shown in subdivision 5 is	Nothing %	Nothing %

(8) Interest Charge.

The actual interest charge paid, divided in the assignable proportions shown in subdivision 6, is	$5,295.38	$4,365.11

202 (E) St. Louis & Hannibal Railway Company.

(1) Period Covered.

The representative period taken by the experts upon both sides as to this company *are* for the year ending June, 30, 1908, and in that period the earnings and expenses were as set forth in subdivisions (1) and (2).

(2) Earnings and Percentages.

Character.	Amount.	Per cent of all freight earnings.	Per cent of all earnings.
Interstate freight	$51,735.05	36.25	24.61
State freight	87,941.99	61.62	41.84
Miscellaneous freight	3,044.11	2.13	1.45
Total	$142,721.15	100.	67.90
		Per cent of all passenger earnings.	
Interstate passenger	$198.19	0.29	0.09
State passenger	52,667.38	78.04	25.05
Miscellaneous passenger	14,619.99	21.67	6.96
Total	$67,485.56	100.	32.10
Grand Total	210,206.71	.....	100.

(3) Expenses, Less Taxes and Rentals, Undivided Between State and Interstate.

All freight expense, including miscellaneous	$117,908.81
All passenger expense, including miscellaneous	68,343.04

	Freight.	Passenger.
Percentages of expenses to earnings	82.61%	101.27%

203 (4) Taxes and Rentals.

Freight	$ 5,994.07
Passenger	2,273.61
Total	$ 8,267.68

(5) State Earnings and Expenses.

	Freight.	Passenger.
State earnings above (par. 2) shown are	$87,941.99	$52,667.38
Expense of state business	72,655.40	53,334.91
Leaving	$15,286.59	Def. 667.53
Less taxes and rentals	3,693.55	1,774.32
Leaving	$11,593.04	Def. 2,441.85
Deduct extra cost of state business freight estimated at 50%, passenger 25%	12,026.69	2,444.68
Leaving	Def. $433.65	Def. 4,886.53

Deduct diminution in earnings if the state freight rates in question had been charged.....	15,126.02	.....
Leaving.....	Def. $15,559.67	Def. 4,886.53

(6) Valuation.

Valuation of property in state is $1,143,007.02, of which 41.84% is assignable to state freight, and 25.05% to state passenger business.....	$478,234.14	$286,323.26
Six per cent upon this part for the period covered is.....	28,694.05	17,179.40

(7) Return on Value.

In the way of a return upon the assignable value found in subdivision 6, the deficit shown in subdivision 5 is.....	Nothing %	Nothing %

(8) Interest Charge.

The actual interest charge paid, divided in the assignable proportions shown in subdivision 6, is.....	$16,359.44	$9,794.55

204 (F) Missouri, Kansas and Texas Railway Company.

(1) Period Covered.

The representative period taken by the experts upon both sides as to this company *are* for July, August, October, November and December, 1907, and January, 1908, and in that period the earnings and expenses were as set forth in subdivisions (1) and (2).

(2) Earnings and Percentages.

Character.	Amount.	Per cent of all freight earnings.	Per cent of all earnings.
Interstate freight	$1,333,455.26	81.73	57.89
State freight	$277,416.52	17.01	12.04
Miscellaneous freight	$20,603.37	1.26	0.89
Total.....	$1,631,475.15	100.	70.82

		Per cent of all passenger earnings.	
Interstate passenger	$303,214.54	45.12	13.16
State passenger	$246,368.53	36.66	10.70
Miscellaneous passenger ...	$122,458.22	18.22	5.32
Total.....	$672,041.29	100.	29.18
Grand Total.....	$2,303,516.44	.....	100.00

(3) Expenses, Less Taxes and Rentals, Undivided Between State and Interstate.

All freight expense, including miscellaneous.....	$1,010,643.65
All passenger expense, including miscellaneous.....	$516,589.98

	Freight.	Passenger.
Percentages of expense to earnings.....	61.95%	76.87%

205 (4) Taxes and Rentals.

Freight	$119,017.87
Passenger	$58,465.49
Total.....	$177,483.36

(5) State Earnings and Expenses.

	Freight.	Passenger.
State earnings above (par. 2) shown are	$277,416.52	$246,368.53
Expenses of state business.....	$171,910.48	$189,381.89
Leaving.....	$105,506.04	$56,986.64
Less taxes and rentals.....	$20,244.94	$21,433.45
Leaving.....	$85,261.10	$35,553.19
Deduct extra cost of state business freight estimated at 50%, passenger 25%	$66,590.77	$27,482.59
Leaving.....	$18,670.33	$8,070.60
Deduct diminution in earnings if the state freight rates in question had been charged	$20,222.85	.....
Leaving as surplus.....	Def. $1,552.52	$8,070.60

(6) Valuation.

Valuation of property in state is $20,894,229.93, of which 12.04% is assignable to state freight and 10.70% to state passenger business	$1,257,832.64	1,117,841.30
Six per cent upon this part for the period covered is	$75,469.96	67,070.48

(7) Return on Value.

In the way of a return upon the assignable value found in subdivision 6, the surplus shown in subdivision 5 is	Nothing %	0.72%

(8) Interest Charge.

The actual interest charge paid, divided in the assignable proportions shown in subdivision 6, is	$62,439.68	$55,490.41

206 (G) CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY.

(1) Period Covered.

The representative period taken by the experts upon both sides as to this company *are* for the year ending June 30, 1908, and in that period the earnings and expenses were as set forth in subdivisions (1) and (2).

(2) Earnings and Percentages.

Character.	Amount.	Per cent of all freight earnings.	Per cent of all earnings.
Interstate freight	$6,454,699.87	78.75	52.40
State freight	$1,580,529.64	19.28	12.83
Miscellaneous freight	$161,579.41	1.97	1.31
Total	$8,196,608.92	100.	66.54
		Per cent of all passenger earnings.	
Interstate passenger	$1,777,788.27	43.15	14.43
State passenger	$1,611,702.92	39.11	13.09
Miscellaneous passenger	$731,021.89	17.74	5.94
Total	$4,120,513.08	100.	33.46
Grand Total	$12,317,122.00	.....	100.

(3) Expenses (Less Taxes and Rentals), Undivided Between State and Interstate.

All freight expense, including miscellaneous.....	$6,793,610.60
All passenger expense, including miscellaneous.....	3,527,311.81

	Freight.	Passenger.
Percentages of expenses to earnings.....	82.88	85.60

207 (4) Taxes and Rentals.

Freight	Cr.	$12,235.30
Passenger	Cr.	6,152.58
Total.....	Cr.	$18,387.88

(5) State Earnings and Expenses.

	Freight.	Passenger.
State earnings above (par. 2) shown are.....	$1,580,529.64	$1,611,702.92
Expense of state business.....	1,324,453.83	1,489,746.71
Leaving.....	$256,075.81	$121,956.21
Less taxes and rentals.....	Cr. 2,487.99	2,798.50
Leaving.....	$258,563.80	$124,754.71
Deduct extra cost of state business freight estimated at 50%, passenger 25%.....	484,129.29	158,205.70
Leaving.....	Def. $225,565.49	Def. $33,450.99
Deduct diminution in earnings if the state freight rates in question had been charged..	112,533.71	.....
Leaving.....	Def. $338,099.20	Def. $33,450.99

(6) Valuation.

Valuation of property in state is $53,172,907.83, of which 12.83% is assignable to state freight, and 13.09% to state passenger business.	$6,822,084.07	$6,960,333.63
Six per cent upon this part for the period covered is.....	409,325.04	417,620.02

(7) Return on Value.

In the way of a return upon the assignable value found in subdivision 6, the deficit shown in subdivision 5 is.....	Nothing %	Nothing %

208 (H) KANSAS CITY, CLINTON & SPRINGFIELD RY. COMPANY.

(1) Period Covered.

The representative period taken by the experts upon both sides as to this company *are* for the year ending June 30th, 1908, and in that period the earnings and expenses were as set forth in subdivisions (1) and (2).

(2) Earnings and Percentages.

Character.	Amount.	Per cent of all freight earnings.	Per cent of all earnings.
Interstate freight	$116,893.60	68.27	41.04
State freight	45,003.15	26.29	15.80
Miscellaneous freight	9,319.58	5.44	3.27
Total	$171,216.33	100.	60.11
		Per cent of all passenger earnings.	
Interstate passenger	$41,145.00	36.22	14.45
State passenger	47,646.80	41.95	16.73
Miscellaneous passenger	24,797.39	21.83	8.71
Total	$113,589.19	100.	39.89
Grand Total	284,805.52	.....	100.

(3) Expenses (Less Taxes and Rentals) Undivided Between State and Interstate.

All freight expense, including miscellaneous	$98,988.29
All passenger expense, including miscellaneous	138,384.77

	Freight.	Passenger.
Percentages of expenses to earnings	57.81%	121.83

209 (4) Taxes and Rentals.

Freight	$9,182.36
Passenger	5,749.38
Total	$14,931.74

(5) State Earnings and Expenses.

	Freight.	Passenger.
State earnings above (par. 2) shown are	$45,003.15	$47,646.80
Expense of state business	26,024.02	58,052.41
Leaving	$18,979.13	Def. $10,405.61
Less taxes and rentals	2,414.04	2,411.86
Leaving	$16,565.09	Def. $12,817.47
Deduct extra cost of state business freight estimated at 50%, passenger 25%	8,483.30	4,760.44
Leaving	$8,081.79	Def. $17,577.91
Deduct diminution in earnings if the state freight rates in question had been charged	2,970.21	.....
Leaving	$5,111.58	Def. $17,577.91

(6) Valuation.

Valuation of property in state is $2,380,222.48 of which 15.80% is assignable to state freight, and 16.73% to state passenger business.	$376,075.15	$398,211.22
Six per cent upon this part for the period covered is	$22,564.51	$23,892.67

(7) Return of Value.

In the way of a return upon the assignable value found in subdivision 6, the surplus shown in subdivision 5 is	1.36%	Nothing %

(8) Interest Charge.

The actual interest charge paid, divided in the assignable proportions shown in subdivision 5, is	$23,881.78	$25,287.48

210 (I) CHICAGO GREAT WESTERN RAILWAY COMPANY.

(1) Period Covered.

The representative period taken by the experts upon both sides as to this company *are* for six months, ending Dec. 31, 1907, and in that period the earnings and expenses were as set forth in subdivisions (1) and (2).

(2) Earnings and Percentages.

Character.	Amount.	Per cent of all freight earnings.	Per cent of all earnings.
Interstate freight	$224,169.58	86.02	57.39
State freight	$29,129.36	11.18	7.45
Miscellaneous freight	$7,280.24	2.80	1.86
Total	$260,579.18	100.	66.70
		Per cent of all passenger earnings.	
Interstate passenger	$72,360.87	55.62	18.53
State passenger	$38,105.03	29.28	9.75
Miscellaneous passenger	$19,643.99	15.10	5.02
Total	$130,109.89	100.	33.30
Grand Total	$390,689.07	.....	100.

(3) Expenses (Less Taxes and Rentals), Undivided Between State and Interstate.

All freight expense, including miscellaneous	$198,887.69
All passenger expense, including miscellaneous	$126,355.88

	Freight.	Passenger.
Percentages of expenses to earnings	76.33%	97.11%

211 (4) Taxes and Rentals.

Freight	$12,294.18
Passenger	$11,312.16
Total	$23,606.34

(5) State Earnings and Expenses.

	Freight.	Passenger.
State earnings above (par. 2) shown are	$29,129.36	$38,105.03
Expenses of state business	$22,235.64	$36,996.98
Leaving	$6,893.72	$1,108.05
Less taxes and rentals	$1,374.49	$3,312.25
Leaving	$5,519.23	Def. $2,204.20
Deduct extra cost of state business freight estimated at 50%, passenger 25%	$9,347.72	$6,090.35
Leaving	Def. $3,828.49	Def. $8,294.55

Deduct diminution in earnings if the state freight rates in question had been charged	$1,893.41	.....
Leaving.....	Def. $5,721.90	Def. $8,294.55

(6) Valuation.

Valuation of property in state is $3,605,236.38, of which 7.45% is assignable to state freight, and 9.75% to state passenger business.....	$134,295.06	$175,755.27
Six per cent upon this part for the Period covered is.....	$8,057.70	$10,545.32

(7) Return of Value.

In the way of a return upon the assignable value found in subdivision 6, the surplus shown in subdivision 5 is.....	.....%	.....%

(8) Interest Charge.

The actual interest charge paid, divided in the assignable proportions shown in subdivision 6, is.....	$7,164.08	$9,375.81

212 22. If it should be assumed that the state experts correctly divided miscellaneous earnings as between state and interstate, which they did not do, still the fair and reasonable sum to be charged against the state part of these miscellaneous freight and passenger earnings is the revenue proportion of the entire freight and passenger expense plus a minimum extra cost for miscellaneous freight and for miscellaneous passenger. When this is done it clearly appears that even without an allowance for extra cost, the result could not be changed if the findings already made as to state freight and passenger had included the miscellaneous, or had the miscellaneous of each class been separately considered. In no case would there be any fair return. If miscellaneous were considered separately, or if considered with freight and passenger respectively, the result would not be effected. This clearly appears from a tabulation now made as to each company with the exception of the St. Louis and Hannibal Ry. Company and the Kansas City, Clinton and Springfield Ry. Co., which are omitted for the reason that the State compiled and submitted no figures for these roads, showing: (*a*) The state experts' division of miscellaneous, though in fact it is too favorable to the state. (*b*) A deduction from earnings of the percentage proportion of expenses to earnings as done in Smyth v. Ames, 169 U. S. 466, which is the same as the revenue basis. (*c*) The minimum extra cost now found of doing the state over interstate being a mere fraction less than, and practically the same as, found as to the strictly freight and passenger. (*d*) The proportion that state's part of the miscellaneous was of all earnings, and the amount of return to which the company was entitled at six per cent interest upon that proportion of the value of the entire property as hereinbefore and now found to be fair, reasonable and just.

213 (1) St. Louis and San Francisco Railroad Company.

	Freight.			Passenger.	
	Amount.	% of all freight.	% of all earnings.	Amount.	% of all pass.	% of all earnings.
Miscellaneous state earnings.....	$17,953.25	00.62	00.44	$125,704.84	10.74	3.10
Less revenue proportion of expense 00.62% freight, and 10.74% passenger	$11,177.44			$104,695.30		
Leaving	$6,775.81			$21,009.54		
Less increased cost freight 50%, passenger 25%	$5,588.72			$22,713.23		
Leaving	$1,187.09			Def. $1,703.69		
Less Taxes and Rentals	$697.20			$4,186.41		
	$489.89			Def. $5,890.10		
Amount due at 6% interest on portion of value assignable to the state part of the traffic	$4,041.74			$28,475.86		
Total Deficit..	$3,551.85			$34,365.96		

214 (2) Atchison, Topeka and Santa Fe Railway Company.

	Freight.			Passenger.	
	Amount.	% of all freight.	% of all earnings.	Amount.	% of all pass.	% of all earnings.
Miscellaneous state earnings	$4,608.35	00.22	00.17	$51,320.16	7.48	1.86
Less revenue proportion of expense 00.22% of freight and 7.48% passenger.	$3,042.02			$42,798.11		
Leaving	$1,566.33			$8,522.05		
Less increased cost freight 50%, passenger 25%.....	$1,521.01			$9,726.84		
Leaving	45.32			Def. 1,204.79		
Less Taxes and rentals	71.20			811.88		
Def..	25.88			Def. 2,016.67		
Amount due at 6% interest on portion of value assignable to the state part of the traffic	$769.65			$8,420.90		
Total Deficit..	$795.53			$10,437.57		

215 (3) Chicago, Rock Island and Pacific Railway Company.

	Freight.				Passenger.	
	Amount.	% of all freight.	% of all earnings.	Amount.	% of all pass.	% of all earnings.
Miscellaneous state earnings	$4,035.01	00.48	00.36	$22,620.48	8.28	2.04
Less revenue proportion of expense 00.48% of freight and 8.28% passenger.	$2,966.88			$26,300.06		
Leaving	$1,069.03			Def. $3,679.58		
Less increased cost freight 50%, passenger 25%	$1,483.44			$5,907.98		
Leaving ..Def.	$414.41			Def. $9,587.56		
Less Taxes and Rentals	356.29			1,740.08		
Def.	$770.70			Def. $11,327.64		
Amount due at 6% interest on portion of value assignable to the state part of the traffic	$1,031.54			$5,845.37		
Total deficit...	$1,802.24			$17,173.01		

216 (4) Kansas City Southern Railway Company.

	Freight.				Passenger.	
	Amount.	% of all freight.	% of all earnings.	Amount.	% of all pass.	% of all earnings.
Miscellaneous state earnings	$7,533.64	00.85	00.72	$10,493.05	6.50	1.00
Less revenue proportion of expense 00.85% freight and 6.50% passenger.	$4,856.03			$9,193.12		
Leaving	$2,677.61			$1,299.93		
Less increased cost freight 50%, passenger 25%	$2,428.02			$2,107.35		
Leaving	249.59			Def. 807.42		
Less taxes and Rentals	189.82			242.93		
	59.77			Def. $1,050.35		
Amount due at 6% interest on portion of value assignable to the state part of the traffic	$1,736.44			$2,411.73		
Total deficit ..	$1,676.67			$3,462.08		

217 (5) Missouri, Kansas and Texas Railwoay Company.

	Freight.			Passenger.	
	Amount.	% of all freight.	% of all earnings.	Amount.	% ofall pass.	% of all earnings.
Miscellaneous state earnings	$3,547.90	00.22	00.15	$54,885.77	8.17	2.38
Less revenue proportion of expense 00.22% freight and 8.17% passenger.	$2,223.42			$42,205.40		
Leaving	$1,324.48			$12,680.37		
Less increased cost freight 50%, passenger 25%	$1,111.71			$9,505.26		
Leaving	212.77			$3,175.11		
Less taxes and Rentals	261.84			$4,776.63		
Def.	49.07			Def. $1,601.52		
Amount due at 6% interest on portion of value assignable to the state part of the traffic	$940.24			$14,918.48		
Total deficit ..	$989.31			$16,520.00		

218 (6) Chicago, Burlington and Quincy Railroad Company.

	Freight.			Passenger.	
	Amount.	% of all freight.	% of all earnings.	Amount.	% of all pass.	% of all earnings.
Miscellaneous state earnings	$31,743.33	00.39	00.26	$347,600.91	8.44	2.82
Less revenue proportion of expense 00.39% freight and 8.44% passenger.	$26,495.08			$297,705.12		
Leaving	$5,248.25			$49,895.79		
Less increased cost freight 50%, passenger 25%	$13,247.54			$66,666.19		
Leaving ..Def.	7,999.29			Def. 16,770.40		
Less Taxes and Rentals .....Cr.	47.72			Cr. 519.28		
Def.	$7,951.57			Def. $16,251.12		
Amount due at 6% interest on portion of value assignable to the state part of the traffic	$8,294.97			$89,968.56		
Total deficit ..	$16,246.54			$106,219.68		

219 (7) CHICAGO GREAT WESTERN RAILWAY COMPANY.

	Freight.			Passenger.		
	Amount.	% of all freight.	% of all earnings.	Amount.	% of all pass.	% of all earnings.
Miscellaneous state earnings	$837.23	00.32	00.21	$6,777.18	5.21	1.73
Less revenue proportion of expense 00.32% freight, and 5.21% passenger.	$636.44			$6,583.14		
Leaving	$200.79			$194.04		
Less increased cost freight 50%, passenger 25%	$318.22			$1,541.54		
Leaving ..Def.	117.43			Def. $1,347.50		
Less taxes and Rentals	39.34			589.36		
Def.	$156.77			Def. $1,936.86		
Amount due at 6% interest on portion of value assignable to the state part of the traffic	$227.13			$1,871.12		
Total deficit ..	$383.90			$3,807.98		

220 23. If the commodities affected by the Freight Act of 1907 are alone considered, irrespective of and separate from the earnings from other freight, the rates are plainly confiscatory, and not only fail to bring any return upon the portion of the property devoted to such use, but do not enable any complainant to meet operating expenses. The following tables are in this respect submitted as findings of the earnings of and expenses fairly chargeable to these commodities for a period which is representative.

(1) ST. LOUIS & SAN FRANCISCO.

For the three months' representative period the result is:

The gross earnings upon the commodities affected by the Freight Act of 1907, for three months, are $56,699.26, or $226,797.04 for the year, which is 10.94% of all state freight earnings. Applying this to the state freight statement, there is the result:

All earnings from this class of state freight were for 3 months	$56,699.26
All state freight expenses were $382,405.32 for three months, and 10.94% thereof chargeable to these commodities	41,835.14
	$14,864.12

Diminution if the rates fixed by the Act of 1907 had been charged	11,389.27
	$3,474.85
10.94% of Extra cost at 50%, $130,246.94	$14,249.02
10.94% of Interest, $117,775.28	12,884.62
10.94% of Valuation, $132,091.26	14,450.78

221 (2) ATCHISON, TOPEKA & SANTA FE.

The gross earnings upon the commodities affected by the Freight Act of 1907, for six months are $47,137.00, or $94,274.00 for the year, which is 33.4% of all state freight earnings. Applying this to the findings as to state freight, there is this result:

All earnings from this class of state freight were for six months	$47,137.00
All state freight expenses were $96,085.30 and 33.4% thereof chargeable to these commodities	32,092.49
Leaving	$15,044.51
Diminution if the rates fixed by the Act of 1907 had been charged	13,885.87
	$1,158.64
33.4% of Extra cost at 50%, $43,443.57	$14,510.15
33.4% of Interest, $17,934.56	5,990.14
33.4% of Valuation, $23,089.55	7,711.91

(3) CHICAGO, ROCK ISLAND & PACIFIC.

For the three months representative period July, August and September, 1907, there was this result:

Revenue actually received on said commodities being 7.24% of total revenue actually received on all freight traffic in Missouri for said three months	$60,639.75
Operating expenses, taxes, rentals and hire of equipment applicable to said revenue for said three months arrived at as follows:	
Total operating expenses, taxes, rentals and hire of equipment, assigned to freight traffic $693,427.16. Proportion (7.24% based on revenue) assigned to commodities affected by maximum freight act of 1907	$50,204.13

222

Net revenue on said commodities for said three mos.	$10,435.62
Deduct the diminution in revenue if said act of 1907 had been in effect	9,989.43
Leaving	$446.19

Deduct extra cost of transporting state freight traffic, assuming such extra cost to be 50%. Schedule 4 shows that 50% increased cost increases revenue percentage from 18.02% to 24.79% an increase of 6.77% or 37.57%. 37.57% of 7.24% equals 2.72%. 2.72% of total operating expenses, excluding taxes, rentals, etc., $618,100.58, equals	$16,812.34
Deficit	$16,366.15

(4) KANSAS CITY SOUTHERN.

The gross earnings upon commodities affected by the Act of 1907 for six months *on* $14,014.31 or $28,028.62 for the year, which is 36.17% of all state freight earnings. Applying this to the state freight statement there is this result:

All earnings from this class of state freight were for six months	$14,014.31
All state freight expenses were $26,000.96 and 36.17% of this amount would be	9,404.55
Leaving	$4,609.76
Diminution if rates fixed by the Act of 1907 had been charged	2,957.58
	$1,652.18
36.17% of extra cost at 50%, $11,735.85	$4,244.86
36.17% of interest, $5,295.38	1,915.34
36.17% of valuation, $13,768.01	4,979.89

223 (5) ST. LOUIS & HANNIBAL.

The gross earnings upon commodities affected by the Act of 1907 for one year are 33%, or $29,020.86.

Applying this to the state freight statement there is this result:

All earnings from this class of freight were	$29,020.86
All state freight expenses were $76,348.95 and 33% of this amount is	25,195.15
Leaving	3,825.71
Diminution if rates fixed by the Act of 1907 had been charged	15,126.02
Deficit	11,300.31
33% of extra cost at 50%, $12,026.69	$3,968.81
33% of interest, $16,359.44	5,398.61
33% of valuation, $43,041.07	14,203.55

(6) Missouri, Kansas & Texas.

Gross earnings on commodities affected by the Act of 1907 for six months (at 33% of total state freight earnings) would be $91,547.45 or $183,094.90 for the year.

Applying this to the state freight statement there is this result:

All earnings from this class of freight were, for six months	$91,547.45
All state freight expenses were $192,155.42 and 33% of this amount would be	63,411.29
Leaving	$28,136.16
224	
Diminution, if rates fixed by Act of 1907 had been charged	20,222.85
	$7,913.31
33 of extra cost at 50%, $73,879.76	$24,380.00
33% of interest, $62,439.68	20,605.09
33% of valuation, $75,469.96	24,905.09

(7) Chicago, Burlington & Quincy.

The gross earnings upon commodities affected by the Act of 1907 for one year were $526,532.72, which is 31.92% of all state freight earnings, for the year 1905.

Applying this to the state freight statement there is this result:

All earnings from this class of state freight were for one year (31.92% of $1,580,529.64)	$504,505.06
All state freight expense- were $1,322,165.90, and 31.92% of this amount is	422,035.35
Leaving	$82,469.71
Diminution, if the rates fixed by the Act of 1907 had been charged	117,388.07
Deficit	$34,918.36
31.92% of extra cost at 50%, $472,092.76	$150,692.00
31.92% of valuation, $409,325.04	130,656.55

(8) Kansas City, Clinton & Springfield Railway Company.

The gross earnings upon commodities affected by the Act of 1907, for one year are $14,365.00. Since the figures of the company do not show miscellaneous freight earnings, they are estimated at
225 31.92% of all state freight, based on C. B. & Q. figures, as the percentage is the smallest with that company. Applying this to the state freight statement there is this result:

Earnings from this class of state freight were, for one year	$14,365.00
All state freight expenses were $28,438.06 and 31.92% of this amount is	9,077.43
Leaving	5,287.57
Diminution, if rates fixed by the Act of 1907 had been charged	2,970.21
	$2,317.36
31.92% of extra cost at 50%, $8,483.30	$2,707.87
31.92% of interest, $23,881.78	7,624.06
31.92% of valuation, $33,846.76	10,803.89

Such an estimate as to this company is reasonable, in that this company is actually losing money upon all its business, so that a finding as to these matters is unnecessary.

(9) CHICAGO GREAT WESTERN.

Gross earnings on commodities affected by the Act of 1907 for three months were $7,817.28, or $31,269.12 for the year, which is 57.81% of all state freight earnings.

Applying this to the state freight statement, there is this result:

All earnings from this class of state freight were (earnings of 3 months $7,817.28 x 2)	$15,634.56
All state freight expenses were $23,610.13 and 57.81% of this amount would be	13,649.02
Leaving	$1,985.54
226 Diminution, if rates fixed by the Act of 1907 had been charged	1,777.34
	$208.20
57.81% of extra cost at 50%, $9,347.72	$5,403.92
57.81% of interest, $7,164.08	4,141.55
57.81% of valuation, $8,057.70	4,658.16

(10) OTHER COMPANIES.

As the cases of the other companies abide the result of that of some other case, a finding in this respect is unnecessary.

227 Afterwards, to-wit, on the 30th day of December, 1908, a Certificate of the Trial Judge was filed. Said Certificate is in words and figures as follows, to-wit:

In the Circuit Court of the United States, Western District of Missouri, Western Division.

No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY
vs.
HERBERT S. HADLEY, Attorney General, and Others.

No. 2989.

THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
vs.
JOSEPH P. RICE and Others.

No. 2990.

THE ST. LOUIS SOUTHWESTERN RAILWAY COMPANY
vs.
JOSEPH P. RICE and Others.

No. 2991.

THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY
vs.
JOHN A. KNOTT and Others.

No. 2992.

THE ST. LOUIS, KANSAS CITY & COLORADO RAILROAD CO.
vs.
JOHN A. KNOTT and Others.

No. 2993.

THE KANSAS CITY SOUTHERN RAILWAY COMPANY
vs.
JOHN A. KNOTT and Others.

No. 2994.

THE ST. LOUIS & HANNIBAL RAILWAY COMPANY
vs.
JOHN A. KNOTT and Others.

No. 2995.

THE MISSOURI PACIFIC RAILWAY COMPANY
vs.
JOHN A. KNOTT and Others.

No. 2996.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY CO.
VS.
JOHN A. KNOTT and Others.

228 No. 2997.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY
VS.
JOHN A. KNOTT and Others.

No. 2998.

CHICAGO, BURLINGTON & QUINCY RAILWAY COMPANY
VS.
JOHN A. KNOTT and Others.

No. 2999.

QUINCY, OMAHA & KANSAS CITY RAILWAY COMPANY
VS.
JOHN A. KNOTT and Others.

No. 3000.

THE WABASH RAILWAY COMPANY
VS.
JOHN A. KNOTT and Others.

No. 3001.

THE ST. JOSEPH & GRAND ISLAND RAILWAY COMPANY
VS.
JOHN A. KNOTT and Others.

No. 3002.

KANSAS CITY, CLINTON & SPRINGFIELD RAILWAY COMPANY
VS.
JOHN A. KNOTT and Others.

No. 3003.

CHICAGO GREAT WESTERN RAILWAY COMPANY
VS.
JOHN A. KNOTT and Others.

No. 3004.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY
VS.
JOHN A. KNOTT and Others.

No. 3006.

THE CHICAGO & ALTON RAILWAY COMPANY
vs.
JOHN A. KNOTT and Others.

Certificate.

Heretofore this court by order made on the 5th day of March, 1906, referred each and all of the foregoing eighteen cases to F. L. Schofield, a Special Master, to take the evidence and report the same to this court, with certain findings, as will appear from the order now of record.

Later on the said Schofield proceeded with said hearing
229 and took certain evidence, much of it being oral testimony taken down by stenographers and duly transcribed, and other evidence being in the form of exhibits.

Later on this court by agreement of parties, to-wit, on the 13th day of June, 1908, made an order that the said cases should come on for trial October 5th, 1908, to the Court on the evidence thus taken by the said Special Master, Mr. Schofield, together with such other and further evidence as might be submitted by the respective parties.

October 5th, 1908, the hearing of said cases was upon the application of the defendants continued until the 9th day of November, 1908, at which time the hearing of said cases was proceeded with and continued with until and including November 14th, 1908, at which time there was an adjournment of the hearing until December 14th, 1908, when the hearing was again resumed and proceeded with until the 30th day of December, 1908, when said hearing was concluded and each, all and every of the parties rested.

The said cases were heard and are to be determined only upon the evidence received by the court, consisting in part of the evidence taken before the Special Master, Mr. Schofield, and in part received by the court in open court, and there was no other or further evidence received by the court or offered by any party other than that hereinafter scheduled. And in the event of an appeal of any or all of the cases, the clerk will certify to said evidence, subject, however, to such rights as the parties may have under the laws and rules of the Appellate Court to designate what shall be certified up and what omitted.

The evidence so taken by the Special Master, returned and filed in open court, and offered in evidence as hereinbefore stated, is as follows:

Five volumes designated as in case No. 2998, marked Volumes I to V, both inclusive, and one volume designated, "2998, Chicago, Burlington & Quincy: Index and Exhibits." Also annual state-
ments of the Chicago, Burlington & Quincy Railroad Com-
230 pany to the Railroad Commissioners for the years ending, respectively, June 30th, 1904, June 30th, 1905, June 30th, 1906, (three copies.)

Also four volumes returned designated as "2995: Missouri Pacific,"

marked respectively, volumes I to IV, inclusive, together with one volume marked "2995, Missouri Pacific Railway: Index and Exhibits." Also the tax return of the Missouri Pacific for June 1st, 1904, June 1st, 1905, the 26th Annual Report of the Missouri Pacific Railway, Exhibit 34, 36-*b*, and 24, in case No. 2995. Also seven analytical sheets of the Missouri Pacific Railway upon form #1939, and seven analytical sheets of the Missouri Pacific Railway upon form #1941, and two analytical sheets of the Missouri Pacific Railway upon form #1940, in case No. 2995.

Also four volumes of testimony marked I to IV, inclusive, in case No. 3000, Wabash Railroad. Also one volume endorsed, "3000 Wabash Railroad: Index and Exhibits." Also exhibits marked in case No. 3000 and being designated "Exhibit 15," being the 15th and 17th Annual Report- of the Directors of the Wabash Railroad Company for the years ending June 30th, 1904, and June 30th, 1906, respectively. Also the 15th and 16th Annual Report- of the Directors of the Wabash Railroad Company for the years ending June 30th, 1904 and June 30th, 1905, respectively, each marked "Exhibit 16." Also the 16th and 17th Annual Reports of the Directors of the Wabash Railroad Company for the years ending respectively, June 30th, 1905 and June 30th, 1906, each marked "Exhibit 17."

Also one volume returned by the Special Master marked "2989, Atchison, Topeka & Santa Fe Proceedings," as showing certain proceedings had before him the said Special Master.

All the evidence offered before the said Special Master and returned into court and used in these cases and all the proceedings had therein, are included in the papers thus specifically enumerated, each volume and document hereinbefore referred to being now identified by the endorsement thereon of the Trial Judge, "Smith McPherson, Judge."

231 And pursuant to the order of the court and by agreement of parties the said cases came on for trial to the Court, November 9th, 1908, and said trial was continued from time to time with certain adjournment until December 30th, 1908, when the trial of all the cases was concluded and the said cases by the Court taken under advisement. The evidence taken before the court in open court is contained in volumes identified as follows:

Volume I, marked filed by the clerk, December 30th, 1908, and further identified by the signature of Smith McPherson, Trial Judge. Volume II, marked filed by the Clerk December 30th, 1908 and further identified by the signature of Smith McPherson, Trial Judge. Volume III, marked filed by the Clerk December 30th, 1908, and further identified by the signature of Smith McPherson, Trial Judge. Volume IV, marked filed by the Clerk December 30th, 1908, and further identified by the signature of Smith McPherson, Trial Judge. Volume V, marked filed by the Clerk December 30th, 1908, and further identified by the signature of Smith McPherson, Trial Judge, said Volume V being made up of exhibits, which together with the exhibits hereinafter scheduled, each and all being marked filed by the Clerk December 30th, 1908, and further identified by the

signature of Smith McPherson, Trial Judge, are all the exhibits offered in open court in the trial of said cases; the exhibits other than those in Volume V being as follows: Exhibits A, B, C, D, E, G, H, I, and Exhibits No. 54, 59, 7, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 4, and Exhibit "Douglas I".

And said cases hereinbefore entitled were heard and fully submitted to the Court on the evidence and the exhibits hereinbefore scheduled, and on no other evidence than that hereinbefore scheduled. And each, all and every of the parties before final submission after the introduction of the foregoing, by counsel in open court said no further evidence was desired or would be offered in the cases.

This certificate is now signed and ordered filed as of this date after the submission of the cases and all of them.

Done in open court this December 30th, 1908.

(Signed) SMITH McPHERSON, *Judge.*

232 Afterwards, to wit, on the 29th day of December, 1908 a Stipulation was filed. Said Stipulation is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 3001.

ST. JOSEPH & GRAND ISLAND RAILWAY COMPANY, Complainant,
vs.
HERBERT S. HADLEY et al., Defendants.

Stipulation.

It is agreed by and between the parties hereto that this case shall abide by the orders, judgment and decree that may be made and entered in cause No. 3003, Chicago Great Western Railway Company vs. Herbert S. Hadley, Attorney General, et al.

R. A. BROWN,
FRANK HAGERMAN,
Solicitors for Defendants.
HERBERT S. HADLEY,
Per JOHN KENNISH,
Solicitors for Defendants.

233 Afterwards, to wit, on the 29th day of December, 1908, the following Order was filed and entered of record:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 3001.

ST. JOSEPH & GRAND ISLAND RAILWAY COMPANY, Complainant,
vs.
HERBERT S. HADLEY et al., Defendants.

Now on this day in accordance with the stipulation of parties filed herein, it is ordered that this case shall abide by the orders, judgment and decree that may be made and entered in cause No. 3003, Chicago Great Western Railway Company vs. Herbert S. Hadley, Attorney General, et al.

(Signed) SMITH McPHERSON, *Judge.*

December 29, 1908.

234 Afterwards, to wit, on the 30th day of December, 1908, the following Order was filed and entered of record:

UNITED STATES OF AMERICA, *sct:*

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. 3001.

THE ST. JOSEPH & GRAND ISLAND RAILWAY COMPANY
vs.
JOHN A. KNOTT et al.

Also

In Equity.

RAILROAD COMPANIES
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Being Cases Numbered 2988, 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004, and 3006.

Now on this day again come the parties by their solicitors. Thereupon the hearing of evidence is concluded, whereupon both parties rest, and this case is fully submitted and is by the Court taken under advisement and the orders and decree herein will be rendered and entered of record as of this date.

(Signed) SMITH McPHERSON, *Judge.*

December 30, 1908.

235 Afterwards, to-wit, on the 21st day of January, 1909, the following order was filed and entered of record:—

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY
vs.
HERBERT S. HADLEY, Attorney General, and Others.

No. 2989.

THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
vs.
JOSEPH P. RICE and Others.

No. 2990.

THE ST. LOUIS SOUTH WESTERN RAILWAY COMPANY
vs.
JOSEPH P. RICE and Others.

No. 2991.

THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY CO.
vs.
JOHN A. KNOTT and Others.

No. 2992.

THE ST. LOUIS, KANSAS CITY & COLORADO RAILROAD CO.
vs.
JOHN A. KNOTT and Others.

No. 2993.

THE KANSAS CITY SOUTHERN RAILWAY COMPANY
vs.
JOHN A. KNOTT and Others.

No. 2994.

THE ST. LOUIS & HANNIBAL RAILWAY COMPANY
vs.
JOHN A. KNOTT and Others.

No. 2995.

THE MISSOURI PACIFIC RAILWAY COMPANY
vs.
JOHN A. KNOTT and Others.

No. 2996.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY CO.
VS.
JOHN A. KNOTT and Others.

236 No. 2997.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY
VS.
JOHN A. KNOTT and Others.

No. 2998.

CHICAGO, BURLINGTON & QUINCY RAILWAY COMPANY
VS.
JOHN A. KNOTT and Others.

No. 2999.

QUINCY, OMAHA & KANSAS CITY RAILWAY COMPANY
VS.
JOHN A. KNOTT and Others.

No. 3000.

THE WABASH RAILWAY COMPANY
VS.
JOHN A. KNOTT and Others.

No. 3001.

THE ST. JOSEPH & GRAND ISLAND RAILWAY COMPANY
VS.
JOHN A. KNOTT and Others.

No. 3002.

KANSAS CITY, CLINTON & SPRINGFIELD RAILWAY CO.
VS.
JOHN A. KNOTT and Others.

No. 3003.

CHICAGO GREAT WESTERN RAILWAY COMPANY
VS.
JOHN A. KNOTT and Others.

No. 3004.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY
VS.
JOHN A. KNOTT and Others.

No. 3006.

THE CHICAGO & ALTON RAILWAY COMPANY
vs.
JOHN A. KNOTT and Others.

Order.

Each of the foregoing causes came on for hearing this January 20, 1909, the parties appeared by counsel, and admitted that the term of office of Herbert S. Hadley as Attorney General had expired, and Elliott W. Major was the duly qualified and acting successor and Attorney General of Missouri. He appeared in
237 person, and by the consent of himself and all counsel in the cases, it is ordered that without any formal pleadings, Elliott W. Major, as Attorney General of Missouri be and he is hereby substituted for and in the stead of Herbert S. Hadley, so that all pleadings against and on behalf of said Hadley shall apply to the substituted party as fully as if made against and for him.

(Signed) SMITH McPHERSON, *Judge.*

Afterwards, to-wit, on the 20th day of February, 1909, the following order was filed and entered of record, to-wit:

In the Circuit Court of the United States, Western District of Missouri, Western Division.

No. 2988. Equity.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY
vs.
HERBERT S. HADLEY et al.

And Equity Cases No. 2989, 2991, 2993, 2994, 2997, 2998, 3002, 3003.

Order.

Whereas, after the cases above numbered had been submitted and argued by agreement of all parties at the request of the Court James Peabody and F. P. Johnson, expert accountants for the railroad companies, and A. P. Taliaferro and T. A. Hamilton, expert accountants for the defendants, compiled statements showing the earnings, operating expenses, etc., for each of said railroad companies for periods of time as therein stated, and affixed a certificate to the effect that said statement in each case correctly shows the results on the various assumptions set forth therein, which said certificate was signed by all four of said expert accountants.

It is therefore ordered that each of said statements be filed and made of record herein.

Done in open court this February 20th, 1909.

(Signed) SMITH McPHERSON, *Judge.*

238 Afterwards, to-wit, on the 6th day of March, 1909, the following order was filed and entered of record, to-wit:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY
vs.
HERBERT S. HADLEY et al.

And Also Numbers 2989 to 3004, Inclusive, and 3006.

Order.

By consent of parties, in accordance with agreements heretofore made and not recorded, it is on this March 6th, 1909, ordered:

1. The answers heretofore filed by the Attorney General and Railroad Commissioners, to which replications were filed, shall be treated and adopted by the other defendants who heretofore demurred herein, as their answers duly replied unto.

2. All the evidence taken before the Special Master and in open court, regardless of the particular case in which it was offered, shall be regarded as having been taken and offered in each of the cases tried.

(Signed) SMITH McPHERSON, *Judge.*

We consent to the above order,

FRANK HAGERMAN,
Solicitor for Complainant.
E. W. MAJOR,
Att'y General;
SANFORD B. LADD,
JOHN KENNISH,
F. W. LEHMANN,
Solicitor- for Appearing and Answering Defendants.

239 Afterwards, to-wit, on the 8th day of March, 1909, *a* findings of fact *was* filed.

Said findings of fact is in words and figures as follows:

In the Circuit Court of the United States, Western District of Missouri, Western Division.

No. 2988. Equity.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY
vs.
HERBERT S. HADLEY et al.

And Equity Cases No. 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004, 3006.

240 *Findings of Fact.*

Prior to the argument the Court requested counsel on both sides to submit requests for findings of fact. Complainants' counsel did this. Defendants' counsel have not done so. Complainants' requests have been considered, some of which are embodied within the following findings, and some are not.

The following are the findings of fact that the Court makes as based upon the evidence herein;

1. The complainants are the eighteen railroad companies owning and operating lines of railroad in Missouri, they doing all of the state and interstate railroad business therein, and all of them except the St. Louis & Hannibal Company having lines of railroad both within and without the state. That company is wholly within the state, extending from Hannibal, Missouri, to the south 120.61 miles. The Kansas City, Clinton & Springfield Company is a road of about 160 miles in length with 151.01 miles in the state. All the other companies have lines extending into a number of other states, one of them extending into thirteen other states and territories. These roads with their own lines and with their connecting carriers, carry all the traffic and do all the business, freight and passenger, within the state, whether of state or interstate character. The intrastate business is at all times herein referred to as state business. That part of the interstate business which neither originates within, nor has its destination within, but passes across the State of Missouri, is called trans-state business.

2. The same roadbed, locomotives, cars and trains including all facilities, are used for both classes of business, state and interstate. It is not practicable to conduct the business in any other way. This is so both from the standpoint of the public and that of the companies. If state business were to be carried alone upon some cars and trains, and interstate alone upon others, the expenses would be enormously increased, and almost if not quite prohibitive, while the public would be subjected to delays, inconveniences, and great expense. By reason of all this the business cannot practically be separated.

3. Both from a geographical and railway standpoint Missouri is situated differently from the other states of the Union, there only being two or three other states that have a resemblance to it in these

particulars, and each of them in a lesser degree. This is so because the Mississippi is its boundary on the east all the distance. From a railroad standpoint the Missouri River is its boundary line on the west, although physically the Missouri River is only the west-
241 ern boundary line from the northwest corner of the state about half way to the southwest corner. But at the half way point, namely, Kansas City, the river turns directly to the east, and continues its way to the Mississippi River. In its production, business and commerce all that part of Missouri to the north of the Missouri River is practically like the south half of Iowa, the country districts producing large quantities of live stock and grain for the market, as well as much bituminous coal. The south half of Missouri is entirely different. The amount of grain and live stock is much less than in the north half of the state. But the south half has a large amount of timber, stone, lime, lead, zinc, iron, and fruits. St. Louis on the east is a city of nearly a million people, Kansas City on the west nearly half as many, while St. Joseph has more than one hundred and twenty-five thousand people. These three cities carry on large manufacturing interests. The grain, live stock, and packing house interests at Kansas City and St. Joseph are enormous. For a third of a century or more for reasons which need not be repeated, rates from the East were fixed to the Mississippi River, and later on, from thence to the Missouri River. The interstate rates either in or out were the one plus the other. It was the same from the West. It was likewise the same for the trans-state business going in either direction. Such is the method existing today. This brought about the fact which for years had existed and exists today, that the short line of road between the two rivers fixes the freight rates. To illustrate, the Burlington road is the short line between the rivers, being 198 miles from Hannibal to St. Joseph, and the same distance, within a few miles, to Kansas City. The roads between Kansas City and St. Louis, and there are four at least of them, including the Burlington, is an average distance of nearly 300 miles, but some of the roads being fifty miles or more farther between the points than the others. This brings about the fact that all freight rates between any one point on the one river and any point on the other river are the same as the rate from Hannibal to St. Joseph over the Burlington line. That is to say, the freight rates on any road regardless of distance are the same between St. Louis and either Kansas City or St. Joseph that they are between Hannibal and St. Joseph over the Burlington line. This has given the three cities of St. Louis, Kansas City and St. Joseph great advantages over other points. Competent persons say that to change this system will work irreparable harm to the three cities named, as well as to all other places within the state, by driving both the jobbing and manufacturing business to seaboard points. As to this no finding is made nor opinion expressed because it is believed to be a matter of policy upon which this court in these cases should express no opinion. As to the
242 passenger rates, by reason of competition the fare is the same between Kansas City and St. Louis, the shorter line fixing the

rates, thereby compelling the longer road to be at much expense without remuneration. This is likewise true as to all competitive points.

As to the foregoing question of rates and fares, there is no United States Statute governing the same, and there is no Missouri statute upon the subject except the two statutes questioned by the bills, one dealing with certain commodities per car per distance, and the other fixing the passenger fares at two cents. Aside from these two statutes, and as to any bearing they have as to charges between the two rivers, the conditions named have been brought about and exist today by reason of a long time custom and by reason of transportation, actual and probable, upon the two rivers.

Still further bearing on the question are the following facts: Joplin is a city in the southwestern part of the state of more than twenty-five thousand people. There are a number of towns adjacent thereto, giving that county (Jasper) a population of 200,000 people. It is a very large mining district of lead and zinc. Between Kansas City and Joplin three of complainants herein have railroads. The Missouri Pacific at all points between the said places is within the state. Each of the other two between said points is partly without the state, starting within and going out and coming back, thereby making it interstate business as to two of the roads between Kansas City and the Joplin district. Between Kansas City and St. Joseph, four roads do the business. Missouri Pacific and Chicago Great Western is each part of the distance within the state of Kansas, while the Burlington and St. Joseph and Grand Island Company is each wholly within the State of Missouri between the two cities. Between St. Joseph and St. Louis two of complainants do practically all the business, which is very large in both passenger and freight. These are the Burlington and Missouri Pacific. Between said cities the Burlington line is wholly within the state. But the Missouri Pacific line is partly within the state of Kansas, crossing the Missouri River at Atchison and coming back into the state at Kansas City. On the foregoing facts the finding is that the short line between two competitive points necessarily fixes the rate, and the Missouri Statutory rates under the statutes in question fix the rates between the cities named. But this is so solely because of the geographical location of cities and railroads, and competition, and long time custom. It is not so either because of a statute or any judicial determination by any of the Courts of Missouri.

243 4. Pending this litigation, each of the complainant companies made and delivered to defendants statements showing the earnings and expenses for certain periods, which statements have been taken by both sides as sufficiently illustrative of the situation for the determination of these cases. The companies extended to the state officers, defendants herein, acting by experts by them selected, the opportunity to examine the statements and the books, papers, vouchers, and records of the companies. The freight rate statute of 1907 as to commodities mentioned allowed greater rates than did the statute of 1905 assailed by the original bills of complaint herein, and it was conceded at the trial that if the rates fixed by the Act of

1907 were confiscatory, that those fixed by the Act of 1905 were likewise.

5. The parties were producing evidence and preparing their evidence for about one year with the aid of experts on each side. These experts were all men of high character and great proficiency as railroad accountants. The experts on each side were given the fullest opportunity and all the time desired to obtain the information and put the same in form in exhibits, schedules and reports, all of which are in evidence in the cases, supplemented by the oral testimony of each of the experts with reference to all of these things.

6. It was conceded by the experts that the companies fairly accurately and honestly kept their books showing the facts in these findings set forth. The experts of the state and of the companies have thereby been enabled to present with certainty and precision all the earnings within the state, both state and interstate business. But obtaining and compiling this information by the experts has been at great expense of time and money. One exception to the foregoing is to be noted as to passenger fares for a short period of time after the two cent fare law became operative. By agreement of both sides in open court in June, 1907, this Court issued a temporary writ of injunction against the enforcement of the freight statute. The complainants asked for a temporary injunction against the enforcement of the two cent passenger fare statute. This Court held that the statute should be given a trial for five months and ascertain the result by actual operation. In preparing the order counsel, no doubt by inadvertence, fixed three months as the period for trial as to results. But by acquiescence of both sides, or if not, by delays with which the Court was not chargeable, such status remained for more than one year, and the cases were not actually brought on for trial until in November, 1908. But after the statute became operative in June, 1907, and this Court denied the temporary writ of injunction, the interstate passenger rates remained as they were for a
244 period of about two months. During the time that condition prevailed parties both coming into and going out of Missouri on interstate journeys would buy tickets to the state line, thereby obtaining the benefit of the two cent fare for all distances within the state. It was not possible for the companies to show the truth as to the number of such trips, and therefore it is not possible for the Court to find just how much of the earnings were on account of such interstate trips. But the extent, whatever it was, would make an erroneous showing as to state earnings, though favorable to defendants, because such earnings were of an interstate character. But even though for the short time a part of the business was thus carried on so that additional earnings were erroneously placed to the credit of the state, still the results are not changed, for the error was against and not in favor of, complainants.

Freight earnings, both state and interstate, are made up from earnings of transportation and another item called "Miscellaneous freight", composed of switching, demurrage, and storage charges, and track and equipment rentals. Passenger earnings are made up of passenger fares and miscellaneous, the latter covering mail, ex-

press, excess baggage, storage, rentals, and possibly some other terminal earnings.

No difference of consequence has arisen between the parties as to the expense of doing the entire business in the state. With reasonable certainty the expenses for doing the freight and passenger, including miscellaneous of each, can be and have been separated.

The earnings are known and fixed and in these findings stated to a certainty. But as to the expenses as between state and inter-state business, there has been a controversy and such is the principal controversy in the cases. There is no known fixed or certain rule for determining how this separation of expenses shall be made. The same cannot be made with mathematical certainty. Complainants claim that the division should be made upon the revenue basis; defendants claim that it should be made upon the ton mile basis for freight, and passenger mile basis for passengers, classifying the miscellaneous earnings as and with freight and passenger earnings respectively. By the revenue basis is meant to assign such proportion of the total expense in the state on that class of business as the earnings of that class of state business bears to all the earnings state and interstate from the same class, or, which is the same thing, ascertain what the percentage of all expenses is of all earnings, then multiply that by the state earnings of any class, and thus obtain the
245 sum to be assigned as state expense. The tone mile basis as to freight means the assignment as state freight expenses of any class of business such proportion of all state expense as the number of ton miles of state freight bears to the total ton miles of all freight hauled within the state. By the passenger mile basis is meant the assignment as state passenger expenses such proportion of all passenger expenses as the number of passengers in state business carried one mile bears to the whole number of passengers state and interstate carried one mile.

For reasons stated in an opinion herein filed, the revenue basis has been and is adopted as the only logical basis to use in arriving at a correct conclusion. The one basis or the other as a whole must be adopted. Either side can make a better showing by adopting the one basis in part of the accounting, and the other basis for the other. Neither should be and is allowed to do this. As will presently appear, the state has attempted to do this in making its passenger earnings accountings.

7. Each basis for accounting has some defects, but they are minor and not controlling and do not change the result if the revenue basis is taken.

The expense of doing the state business over interstate is greater for carrying freight by at least fifty per cent., and at least twenty-five per cent for carrying passengers. Therefore this extra cost must be added to the expenses after they have been ascertained so as to obtain the total expense. If the ton mile basis of division were adopted, the extra cost should also be added. This would require the use of another multiplier sufficient to bring the sum total of the state freight expense equal to that found herein, to actually represent the cost as shown by the evidence. Any apportionment of passenger

expense upon the passenger mile basis would be unfair and unjust, although much more favorable to the companies than if made upon the revenue basis.

8. All things considered, the evidence shows the cost of doing the different classes of state business as between state and interstate apportioned upon the revenue basis with added extra cost brings a result in these findings stated, which is fair and representative and just. The Court finds, aside from the revenue basis, that the evidence shows the amount ascertained in each case as the expense and extra cost, is fair and justly represents the expense of doing each class of state business. The extra cost as to each complainant for doing the state business over interstate is more than fifty per cent in case of freight, and more than twenty-five per cent in case of passenger. This extra expense as thus found is considerably in
246 excess of these figures and the figures used are adopted as the minimum. The sum total of this extra cost if ascertained according to the ton mile theory, would not be changed because it is a question of multiplication, and one multiplier or another must be used accordingly as the theory is adopted. The findings herein made on all the evidence represent in dollars the fair cost and expense fixed at a minimum. There has also been considered and found in each case such sum as would equal the diminution of earnings upon the commodities covered by the freight rate statutes of 1905 and 1907 if the rates thus fixed had been charged, as there would have been but for the temporary injunctions herein issued.

9. The evidence shows that each of complainants has regularly paid for many years interest on its bonds. There is no evidence to show that any of the railroad property within the State of Missouri has an undue amount of bonds or is unfairly bonded, and the evidence does not show that any of the bonds provide for interest in any sum greater than such bonds should carry. It does show that most of the bonds are at the lowest rates of interest, and much less than the legal rate allowable in Missouri. In thus referring to interest, the St. Louis & Hannibal, and Kansas City, Clinton & Springfield companies are excepted.

10. After the adoption of the two cent fare statute, there was no substantial increase in travel. For a few weeks there was a small increase largely brought about by interstate passengers buying tickets to state lines, and in part by the novelty. What if any increase of travel occurred by reason of said two cent fare, would be a mere approximation. It has not been substantial, and there is no reason to believe that any such increase will be brought about in the future by a two cent fare.

11. The values of the railroad properties in the State of Missouri are found, in the cases tried to be as follows:—

	Miles.	Value.	Value per mile.
St. Louis & San Francisco..	1,688.89	$61,238,414.70	$36,259.00
Atchison, Topeka & Santa Fe	348.31	15,091,212.00	43,326.00
Chicago, Rock Island & Pacific	515.48	19,102,507.59	37,058.00
Kansas City Southern.....	174.48	8,039,084.40	46,075.00
St. Louis & Hannibal.....	120.61	1,143,077.02	9,477.00
Missouri, Kansas & Texas..	506.21	20,894,299.93	41,276.00
Chicago, Burlington & Quincy.....	1136.34	53,172,907.83	46,793.00
Kan. City, Clinton & Springf'd	151.01	2,380,222.48	15,762.00
Chicago Great Western....	84.43	3,605,236.38	42,701.00

247 With the exceptions hereinafter stated, the above valuations of the properties of said nine companies as fixed, are in fact practically the same as those fixed by the state assessing board for the purpose of taxation. But aside and apart from the valuations thus fixed by the state board, these findings are that upon the whole evidence said properties are at least of the values above fixed. The evidence shows that included in such sums the state board after making certain valuations under the heading of "all other property" fixed certain valuations which when added give the totals as above. In argument it was contended that "all other property" included franchise values. This is not deemed important because it is difficult to see wherein steam railroad property like those involved, can have a franchise value. But waiving that, any franchise value that the state board could have considered, was necessarily so small a per cent of the total valuations fixed by the state board as to make no appreciable difference in the result of these cases, because if altogether admitted the remaining value is such that no road could obtain a return to which it is herein found to be entitled. But if the property has a franchise value for taxation, it also has such valuation as an earning power or, rather, upon which returns should be made. In fixing the valuations above set forth there have been considered the immense terminal values of most of the roads, the amount of stock and bonds outstanding, what it would cost to duplicate the properties both with and without terminals in the large cities, and all the evidence bearing on present values, and in fixing said valuations the sums found are the minimum valuations, the properties being worth at least the sums thus fixed.

The foregoing valuations are the same as fixed by the state assessing board except as to the property of the St. Louis & Hannibal and of the Kansas City, Clinton & Springfield in the state, which are found to be worth sixty-six and two-thirds per cent. of the valuations of the state boards.

12. The interest obligations except as already stated are just and reasonable and should be paid in full with some dividends to the stockholders in addition. However, and entirely aside from the question of interest, the rates and earnings should in any event be

such as to produce a fair return upon the valuations hereinbefore fixed.

And such earnings should be on the property within the state as would be equivalent to six per centum per annum, that per cent. being a fair return upon such valuations.

13. About the same time the two cent fare statute became operative, passes and other forms of reduced and free transportation, were abolished. Since that time they have not been given nor used except in cases of employés actually employed. The passen-
248 ger earnings were thereby increased, but such increase was not more than approximately one per cent.

14. After the arguments were concluded at the request of the Court, and with the consent of the parties, two experts upon each side, two selected by the railways and two by the defendants, worked with the Court for something more than one week. These experts were the same gentlemen representing their respective sides who had done much of the work in preparing the cases for the respective sides for hearing. The Court requested these experts to take the numerous tables and tabulate them already in evidence and to confine themselves wholly to that which had been introduced in evidence in the cases, and to make therefrom a new table for each of the nine cases showing the earnings and the expenses chargeable to each class of earnings according to the respective theories covered by counsel in the arguments. The Court further requested said four experts after preparing said new tables that if they agreed, to affix their signatures thereto. This they did below a certificate reciting that the statement of earnings, operating expenses, etc., as to each particular road for the time therein given, correctly shows the results on the various assumptions set forth therein. Said nine statements were by order of this Court, February 20, 1909, ordered filed and made of record in the cases. The said nine statements are now and here referred to, and are made part hereof. Each of said nine statements is found by the Court to be correct upon the respective theories presented. But the theory entitled as the "state's basis" is rejected for the reason that said statement improperly divides miscellaneous earnings, placing an undue proportion to the benefit of the state. And said basis improperly makes a division of expense upon the ton mile and passenger mile basis and does not allow a sufficient amount as extra cost of doing state business, and the same does not allow enough for the value of the property in that it deducts all sums included "all other property" multipled by three.

If the companies had been permitted to charge the amounts per passenger per mile which they did charge and receive prior to the two cent passenger fare statute, they would have received in addition to that which they did receive by reason of the statute and by reason of the temporary injunction being denied for earnings within the state for a period of twelve months last preceding the submission of the cases, the following sums; (Interstate, however, not controlled by statute, but by changed conditions.)

249

Name of road.	State passengers.	Interstate passengers.
St. L. & S. F. R. R.	$666,008.72	$509,730.63
A. T. & S. F. R. R.	30,885.52	66,271.03
C. R. I. & P. Ry. and St. L. K. C. & C. Ry.	124,469.14	11,178.60
K. C. So. Ry.	7,044.49	27,260.75
St. L. & H. Ry.	37,275.38	145.23
M. K. & T. Ry.	140,593.46	63,815.12
K. C. C. & S. Ry.	14,654.57	10,846.91
C. B. & Q. R. R.	394,878.77	261,556.41
C. G. W. Ry.	49,459.47	34,621.62

In the case of the St. Louis & San Francisco there were included in expenses sums paid as rentals under a lease given by the Kansas City Fort Scott & Memphis Railway Company whose common stock is owned by it which operates the company under a lease requiring it to pay to the holders of preferred stock of the Fort Scott & Memphis Company, as a rental, a sum equal to four per cent annual dividends. This lease has been in force several years and is a fair one, and such rental has been treated as an operating expense, and is not included in fixed charges. And the Court finds that it is an operating expense. But even if it were a fixed charge it is not material as the result would not be changed even though the rentals were carried into the fixed charge account. This is so because the amounts carried into state freight expense is only $8,428.56 and interstate passenger expense, $7,443.68.

15. In the statements hereinbefore referred to made and signed by the four experts, while they correctly set forth the figures on both the revenue theory and the ton and passenger mile theory the placing of the miscellaneous earnings of the passenger business is arbitrarily fixed and does not at all proceed upon the passenger mile basis, but for that the revenue basis is taken and fixed. Such earnings are arbitrarily divided without reference to the facts, the result being the state earnings and especially passenger, are fixed much higher than the actual earnings. Said division instead of following defendants' theory o fthe ton mile and passenger mile basis, is upon the revenue basis from which it is seen that this would be a splitting of theories. But from this and from all the evidence it is plain that even the ton and passenger mile basis theory cannot be worked out without showing a loss, to prevent which an arbitrary change of account must be made as to the miscellaneous business. Even in making this arbitrary change the revenue basis is used,
250 and yet the revenue division of expenses insisted upon by complainants is said not to be recognized. This is utterly illogical and unfair, and does not represent the true facts as to whether such earnings are made at a loss, and there is no reliance whatever to be placed in such method of accounting. In so finding no reflection whatever is made upon the experts for the state,

because as before found they are men of the highest character and learning and highly skilled in accounting and with a proper basis for such accounting their work is perfect. And from their own statements upon the basis adopted herein for making such accounting by the Court, the freight business for the period mentioned would have been done at a loss if the statutory rates had been observed, and the passenger business was done at a loss under the two cent fare statute.

16. As to each of the nine companies whose cases have been submitted, the earnings and expenses and all other items are different in amount. So with the returns upon value to which the company is entitled. But in no event in any of the cases tried would the freight earnings, after making the deductions herein found result in a return to any company of more than three per cent. With nearly every company an actual deficit is shown if the 1907 statute had been in force. So under the two cent fare statute a deficit as to nearly all of the companies, and not more than two per cent. in case of any company. If the freight and passenger business should be combined with the miscellaneous of each class, there would be a deficit as to some and not to exceed three per cent. as to any of the others. In arriving at these conclusions and in adopting the tabulations herein set forth an account has been taken of all earnings, state and interstate, freight and passenger, and miscellaneous; the proportion which state and interstate freight and passenger exclusive of miscellaneous bear to all state and interstate, miscellaneous included, and that which they bear to all the earnings of the state; of miscellaneous freight and miscellaneous passenger earnings, undivided as between state and interstate, with the proportion they are of all earnings, freight and passenger; of all expenses divided as between all kinds of freight and passenger business, including miscellaneous, but not divided as between state and interstate; of the deductions to be made from all state freights not including miscellaneous of such proportion of expenses of all freight and passenger respectively as the freight and passenger earnings exclusive of miscellaneous bear to all earnings; of the deduction of the extra cost; of the diminution of freight earnings if the freight rate statute had been observed; of the value of that portion of the property assignable to the particular traffic. This value is found by taking for each class of business of the entire value of the property in the state, such
251 proportion as the earnings on that portion of the business bear to all the earnings in the state. A statement so made as to each of the companies whose cases have been submitted is as follows:

17. The periods taken are representative taken by the experts upon both sides, and were for the months set forth in the column headed "time." These tables do not follow the form taken by the experts in preparing exhibits to be introduced in evidence, nor do they follow the prepared form adopted by the four experts in making the nine statements hereinbefore referred to. An attempt has been made to abbreviate, but with the results the same as adopted

by the experts. These are found to be correct as now to be set forth, and are adopted by the Court. If any error has crept into them, the Court will make proper correction upon his attention being called thereto after these findings have been filed, which can be readily done upon motion or suggestion. The tables adopted by the Court now follow:

Interstate Freight.

Company.	Time Mo.	Amount.	% of all freight.	% of all earnings.
St. L. & S. F. R. R....	3	$2,214,002.82	76.94	54.68
A. T. & S. F. R. R....	6	1,872,915.00	90.05	67.72
C. R. I. & P. Ry.....	3	665,228.16	79.38	59.86
K. C. So. Ry.....	6	702,249.91	79.35	67.11
St. L. & H. Ry.....	12	51,735.05	36.25	24.61
M. K. & T. Ry.....	6	1,333,455.26	81.73	57.89
C. B. & Q. R. R.....	12	6,454,699.87	78.75	52.40
K. C. C. & S. Ry.....	12	116,893.60	68.27	41.04
C. G. W. Ry.....	6	224,169.58	86.02	57.39

State Freight.

Company.	Amount.	% of all freight.	% of all earnings.
St. L. & S. F. R. R.....	$577,192.84	20.04	14.26
A. T. & S. F. R. R.....	141,133.00	6.79	5.10
C. R. I. & P. Ry.....	150,953.68	18.02	13.58
K. C. So. Ry.....	38,748.76	4.38	3.70
St. L. & H. Ry.....	87,941.99	61.62	41.84
M. K. & T. R. R.....	277,416.52	17.01	12.04
C. B. & Q. R. R.....	1,580,529.64	19.28	12.83
K. C. C. & S. Ry.....	45,003.15	26.29	15.80
C. G. W. Ry.....	29,129.36	11.18	7.45

252 *Miscellaneous Freight.*

St. L. & S. F. R. R.....	$86,814.57	3.02	2.14
A. T. & S. F. R. R.....	65,833.56	3.16	2.38
C. R. I. & P. Ry.....	21,815.70	2.60	1.96
K. C. So. Ry.....	144,046.62	16.27	13.77
St. L. & H. Ry.....	3,044.11	2.13	1.45
M. K. & T. Ry.....	20,603.37	1.26	0.89
C. B. & Q. Ry.....	161,579.41	1.97	1.31
K. C. C. & S. Ry.....	9,319.58	5.44	3.27
C. G. W. Ry.....	7,280.24	2.80	1.86

Interstate Passenger.

Company.	Amount.	% of all passenger.	% of all earnings.
St. L. & S. F. R. R.	$368,687.43	31.49	9.11
A. T. & S. F. R. R.	355,318.12	51.81	12.85
C. R. I. & P. Ry.	113,524.21	41.53	10.22
K. C. So. Ry.	89,504.58	55.47	8.55
St. L. & H. Ry.	198.19	0.29	0.09
M. K. & T. R. R.	303,214.54	45.12	13.16
C. B. & Q. Ry.	1,777,788.27	43.15	14.43
K. C. C. & S. Ry.	41,145.00	36.22	14.45
C. G. W. Ry.	72,360.87	55.62	18.53

State Passenger.

Company.	Amount.	% of all passenger.	% of all earnings.
St. L. & S. F. R. R.	599,051.59	51.17	14.79
A. T. & S. F. R. R.	104,370.19	15.22	3.77
C. R. I. & P. Ry.	114,853.04	42.02	10.33
K. C. So. Ry.	31,865.28	19.75	3.05
St. L. & H. Ry.	52,667.38	78.04	25.05
M. K. & T. R. R.	246,368.53	36.66	10.70
C. B. & Q. R. R.	1,611,702.92	39.11	13.09
K. C. C. & S. Ry.	47,646.80	41.95	16.73
C. G. W. Ry.	38,105.03	29.28	9.75

253 *Miscellaneous Passenger.*

Company.	Amount.	% of all passenger.	% of all earnings.
St. L. & S. F. R. R.	$203,077.28	17.34	5.02
A. T. & S. F. R. R.	226,080.00	32.97	8.18
C. R. I. & P. Ry.	44,980.08	16.45	4.05
K. C. So. Ry.	39,973.54	24.78	3.82
St. L. & H. Ry.	14,619.99	21.67	6.96
M. K. & T. Ry.	122,458.22	18.22	5.32
C. B. & Q. R. R.	731,021.89	17.74	5.94
K. C. C. & S. Ry.	24,797.39	21.83	8.71
C. G. W. Ry.	19,643.99	15.10	5.02

18. All freight and Passenger Expenses, including Miscellaneous, less taxes and rentals, and percentages to earnings, undivided as between State and Interstate.

Company.	Freight.	Passenger.	Taxes and rentals. Freight.	Taxes and rentals. Passenger.
St. L. & S. F. R.	1,802,813.26	974,816.61	112,452.04	38,979.63
A. T. & S. F.	1,382,738.65	572,167.20	32,361.50	10,854.04
C. R. I. & P.	619,199.73	317,633.62	74,227.43	21,015.44
K. C. So.	571,297.54	141,432.56	22,331.70	3,737.37
St. L. & H.	117,908.81	68,343.04	5,994.07	2,273.61
M. K. & T.	1,010,643.65	516,589.98	117,017.87	58,465.49
C. B. & Q.	6,793,610.60	3,527,311.81	12,235.30cr.	6,152.58cr.
K. C. C. & S.	98,988.29	138,384.77	9,182.36	5,749.38
C. G. W.	198,887.69	126,355.88	12,294.18	11,312.16

Company.	% of said expenses to earnings, exclusive of taxes and rentals. Freight.	Passenger.	Same including taxes and rentals. Freight.	Passenger
St. L. & S. F. R. R...	62.64	83.26	3.91	3.33
A. T. & S. F. R. R....	66.48	83.43	1.55	1.58
C. R. I. & P. Ry.....	73.89	116.20	8.86	7.68
K. C. So. Ry.....	64.55	87.66	2.52	2.31
St. L. & H. Ry.....	82.61	101.27	4.19	3.37
M. K. & T. Ry.....	61.95	76.87	7.29	8.69
C. B. & Q. Ry.....	82.88	85.60	0.00	0.00
K. C. C. & S. Ry.....	57.81	121.83	5.36	5.06
C. G. W. Ry.....	76.33	97.11	4.71	8.68

254 The time of the foregoing tables is the same as in first table above.

19. The following nine tables show the state earnings and expenses, valuation, return on value, and interest charge of the said nine roads respectively whose cases have been submitted. The other cases are to be covered by decrees by agreement the same as certain decrees of the nine cases, all of which is of record.

St. Louis & San Francisco Railroad Company.

Period, Three Months.

State earnings and expenses.	Freight.	Passenger.
State earnings.....	577,192.84	599,051.59
State expenses.....	361,644.33	498,716.20
Leaving.....	215,548.51	100,335.39
Less taxes and rentals...	22,760.29	20,097.90
Leaving.....	192,788.22	80,237.49
Extra cost of doing state business, freight, 50%, passenger 25%	131,425.08	53,907.36
Leaving.....	61,363.14	26,330.13
Diminution in earnings If the state rates in question had been charged.	11,389.27	.....
Leaving.....	49,973.87	26,330.13
Valuation:		
Assignable proportion of value for representative period, and 6% interest thereon, is.....	130,988.97 14.26%	135,857.42 14.79%

Return on Value:				
(*a*) Actual return upon the assignable value found in subdivision above, the amount shown in first subdivision above is	.....	2.29%	.....	1.16%
(*b*) Same without allowance for extra cost.	.....	8.2%	.....	3.5%
Interest Charge:				
Actual interest charge paid on assignable properties	116,792.45		121,133.27	

255 ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY.

Period, Six Months.

State earnings and expenses.	Freight.	Passenger.
State earnings	141,133.00	104,370.19
State expenses	92,581.89	87,834.09
Leaving.....	48,551.11	16,536.10
Less taxes and rentals...	3,503.41	901.74
Leaving.....	45,047.70	15,634.36
Extra cost of doing state business, freight 50%, passenger 25%	41,859.55	17,947.71
Leaving.....	3,188.15	2,313.35 (red ink) (deficit)
Diminution in earnings if the state rates in question had been charged.	13,885.87	.....
Leaving.....	10,697.72 (red ink) (deficit)	2,313.35 (red ink) (deficit)
Valuation:		
Assignable proportion of value for representative period, and 6% interest thereon	23,089.35 5.10%	17,068.16 3.77%

Return on value:				
(*a*) Actual return upon the assignable value found in subdivision above, the amount shown in first subdivision above is.....	.....	nothing	.....	nothing
(*b*) Same without allowance for extra cost.	.....	8%	.....	5.49%
Interest charge:				
Actual interest charge paid on assignable properties	17,934.56		13,257.51	

256 THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY.

Period, Three Months.

State earnings and expenses.	Freight.		Passenger.	
State earnings	150,953.68		114,853.04	
State expenses	111,579.80		133,469.65	
Leaving.....	39,373.88		18,616.61	(red ink) (deficit)
Less taxes and rentals...	13,375.78		8,830.68	
Leaving.....	25,998.10		27,447.29	(red ink) (deficit)
Extra cost of doing state business, freight 50%, passenger 25%	41,919.82		17,501.61	
Leaving.....	15,921.72	(red ink) (deficit)	44,948.90	(red ink) (deficit)
Diminution in earnings if the state rates in question had been charged.	9,989.43		.....	
Leaving.....	25,911.15	(red ink) (deficit)	44,948.90	(red ink) (deficit)
Valuation:				
Assignable proportion of value for representative period and 6% interest thereon	38,911.81	13.58%	29,599.34	10.33%

Return on value:				
(*a*) Actual return upon the assignable value found in subdivision above, the amount shown in the first subdivision above is.....	.....	nothing	.....	nothing
(*b*) Same without allowance for extra cost.	.....	2.47%	.....	nothing
Interest charge:				
Actual interest charge paid on assignable properties	24,907.02		18,946.21	

257 THE KANSAS CITY SOUTHERN RAILWAY COMPANY.

Period, Six Months.

State earnings and expenses.	Freight.		Passenger.	
State earnings	38,748.76		31,865.28	
State expenses	25,022.83		27,932.93	
Leaving.....	13,725.93		3,932.35	
Less taxes and rentals...	978.13		738.13	
Leaving.....	12,747.80		3,194.22	
Extra cost of doing state business, freight 50%, passenger 25%	11,711.60		5,346.15	
Leaving.....	1,036.20		2,151.95	(red ink) (deficit)
Diminution in earnings if the state rates in question had been charged.	2,957.58		.....	
Leaving.....	1,921.38	(red ink) (deficit)	2,151.93	(red ink) (deficit)
Valuation:				
Assignable proportion of value for representative period, and 6% interest thereon	8,923.38	3.70%	7,355.76	3.05%

Return on value:				
(*a*) Actual return upon the assignable value found in subdivision above, the amount shown in first subdivision above is.....	.....	nothing	.....	nothing
(*b*) Same without allowance for extra cost.	.....	6.58%	.....	2.6%
Interest charge:				
Actual interest charge paid on assignable properties	9,295.38		4,365.11	

258 THE ST. LOUIS & HANNIBAL RAILWAY COMPANY.

Period, Twelve Months.

State earnings and expenses.	Freight.		Passenger.	
State earnings	87,941.99		52,667.38	
State expenses	72,655.40		53,334.91	
Leaving.....	15,286.59		667.53	(red ink) (deficit)
Less taxes and rentals...	3,693.55		1,774.32	
Leaving.....	11,593.04		2,441.85	(red ink) (deficit)
Extra cost of doing state business, freight 50%, passenger 25%	12,026.69		2,444.68	
Leaving.....	433.65	(red ink) (deficit)	4,886.53	(red ink) (deficit)
Diminution in earnings if the state rates in question had been charged.	15,126.02		.....	
Leaving.....	15,559.67	(red ink) (deficit)	4,886.53	(red ink) (deficit)
Valuation:				
Assignable proportion of value for representative period, and 6% interest thereon	28,694.05	41.84%	17,179.40	25.05%

Return on value:				
(*a*) Actual return upon the assignable value found in subdivision above, the amount shown in the first subdivision above is.....	.....	nothing	.....	nothing
(*b*) Same without allowance for extra cost.	.....	nothing	.....	nothing
Interest charge:				
Actual interest charge paid on assignable property	16,359.44		9,794.55	

259 MISSOURI, KANSAS & TEXAS RAILWAY COMPANY.

Period, Six Months.

State earnings and expenses.	Freight.		Passenger.	
State earnings	277,416.52		246,368.53	
State expenses	171,910.48		189,381.89	
Leaving.....	105,506.04		56,986.64	
Less taxes and rentals...	20,244.94		21,433.45	
Leaving.....	85,261.10		35,553.19	
Extra cost of doing state business, freight 50%, passenger 25%.....	66,096.09		27,482.59	
Leaving	19,165.01		8,070.60	
Diminution in earnings if the state rates in question had been charged.	20,222.85		.....	
Leaving.....	1,057.84	(red ink) (deficit)	8,070.60	
Valuation:				
Assignable proportion of value for representative period, and 6% interest thereon	75,469.96	13.04%	67,070.48	10.70%

Return on value:				
(a) Actual return upon the assignable value found in subdivision above, the amount shown in first subdivision above is	..... nothing		..... 0.72%	
(b) Same without allowance for extra cost..	..... 5.18%		..... 3.18%	
Interest charge:				
Actual interest charge paid on assignable properties	62,439.68		55,490.41	

260 CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY.

Period, Twelve Months.

State earnings and expenses.	Freight.		Passenger.	
State earnings	1,580,529.64		1,611,702.92	
State expenses	1,324,453.83		1,489,746.71	
Leaving.....	256,075.81		121,956.21	
Less taxes and rentals...	2,487.99	cr.	2,798.50	cr.
Leaving.....	258,563.80		124,754.71	
Extra cost of doing state business, freight 50%, passenger 25%	484,129.29		158,205.70	
Leaving.....	225,565.49	(red ink) (deficit)	33,450.99	(red ink) (deficit)
Diminution in earnings if the state rates in question had been charged.	112,533.71		.....	
Leaving.....	338,099.20	(red ink) (deficit)	33,450.99	(red ink) (deficit)
Valuation:				
Assignable proportion of value for representative period, and 6% interest thereon	409,325.04	12.83%	417,620.02	13.09%

Return on value:				
(*a*) Actual return upon the assignable value found in subdivision above, the amount shown in the first subdivision above is.....	.....	nothing	.....	nothing
(*b*) Same without allowance for extra cost.	.....	2.11%	.....	1.79%
Interest charge:				
Actual interest charge paid on assignable property	132,735.02		135,424.89	

261 KANSAS CITY, CLINTON & SPRINGFIELD RAILROAD COMPANY.

For Period of Twelve Months.

State earnings and expenses.	Freight.		Passenger.	
State earnings	45,003.15		47,646.80	
State expenses	26,024.02		58,052.41	
Leaving.....	18,979.13		10,405.61	(red ink) (deficit)
Less taxes and rentals...	2,414.04		2,411.86	
Leaving.....	16,565.09		12,817.47	(red ink) (deficit)
Extra cost of doing state business, freight 50%, passenger 25%	8,483.30		7,625.00	
passenger 25%	8,081.79		20,442.47	(red ink) (deficit)
Diminution in earnings if the state rates in question had been charged.	2,970.21		.....	
Leaving.....	5,111.58		20,442.47	(red ink) (deficit)
Valuation:				
Assignable proportion of value for representative period, and 6% interest thereon	22,564.51	15.80%	23,892.67	16.73%

Return on value:				
(*a*) Actual return upon the assignable value found in subdivision above, the amount shown in first subdivision above is	.....	1.36%	.....	nothing
(*b*) Same without allowance for extra cost	.....	3.61%	.....	nothing
Interest charge:				
Actual interest charge paid on assignable properties	23,881.78		25,288.48	

262 CHICAGO GREAT WESTERN RAILWAY COMPANY.

Period, Six Months.

State earnings and expenses.	Freight.		Passenger.	
State earnings	29,129.36		38,105.03	
State expenses	22,235.64		36,996.98	
Leaving.....	6,893.72		1,108.05	
Less taxes and rentals...	1,374.49		3,312.25	
Leaving.....	5,519.23		2,204.20	(red ink) (deficit)
Extra cost of doing state business, freight 50%, passenger 25%	9,347.72		6,090.35	
Leaving.....	3,828.49	(red ink) (deficit)	8,294.55	(red ink) (deficit)
Diminution in earnings if the state rates in question had been charged.	1,893.41		.....	
Leaving.....	5,721.90	(red ink) (deficit)	8,294.55	(red ink) (deficit)
Valuation:				
Assignable proportion of value for representative period, and 6% interest thereon	8,057.70	7.45%	10,545.32	9.75%

Return on value:		
(*a*) Actual return upon the assignable value found in subdivision above, the amount shown in first subdivision above is.....	nothing	nothing
(*b*) Same without allowance for extra cost.	2.69%	nothing
Interest charge:		
Actual interest charge paid on assignable properties	7,164.08	9,375.81

263

20. The Court believes that the foregoing findings are all that are material and all that are necessary to make. However, if any party believes that any material finding of fact has been omitted, upon application of such party the same will be considered and made if deemed advisable. And likewise if any of the foregoing computations or figures have been erroneously made. But such application to be entertained, must be made within thirty days from this date.

And each, all and every of the foregoing are made as the findings of the Court, and are now and here in open court this March 8th, 1909, ordered filed and made of record in said cases and all of them.

(Signed) SMITH McPHERSON, *Judge.*

Afterwards, to-wit, on the 22nd day of March, 1909, the same being a day of the regular November, 1908, term of said court, the following Decree was filed and entered of record:—

264 & 265 In the Circuit Court of the United States, Western District of Missouri, at Kansas City.

No. 3001. Equity.

THE ST. JOSEPH & GRAND ISLAND RAILWAY COMPANY, Complainant,

vs.

JOHN A. KNOTT, JOSEPH P. RICE and FRANK A. WIGHTMAN, Railroad Commissioners of the State of Missouri; Herbert S. Hadley, Attorney General of the State of Missouri; Wyeth Hardware and Manufacturing Company, a Corporation, and Jones-Payne Hat Company, a Corporation; H. R. Oglesby, Railroad Commissioner of the State of Missouri; Joseph M. Patterson, Charles E. Moss and George Dodd, County Judges, and Arthur C. Warner, County Treasurer; Thomas P. Gordon and Albert J. Brunswig, and Elliott W. Major, Attorney General of the State of Missouri, Respondents.

Final Decree.

The above entitled case this March 8th, 1909 comes on for final decree upon the evidence and stipulations upon file and of record

herein, the cases having heretofore been fully argued and fully submitted and taken under advisement. And now at this time the Court being fully advised in the premises, the parties appearing by their respective counsel, for reasons stated in an opinion by the Trial Judge and findings of fact signed and filed herein, orders, adjudges and decrees:

1. The maximum freight rate laws of Missouri, of 1905 and 1907, and the passenger rate law of 1907, mentioned in paragraph 2 hereof, and set forth in the original bill and amendments and supplements thereto, are unreasonable and confiscatory; do not afford the complainant any fair or reasonable return upon the value of its property, and to comply therewith would take the property of complainant without due process of law. None of the provisions thereof
266 should or can be rightfully decreed against complainant, its officers, agents or employés. A finding of fact has been prepared and filed, and is hereby referred to as if made part hereof.

2. Defendants Elliott W. Major, Attorney General of the State of Missouri, John A. Knott, H. R. Oglesby, and Frank A. Wightman, Railroad Commissioners of the State of Missouri, and each of them, their agents, employés and successors, are hereby enjoined from enforcing, or attempting, directly or indirectly, by suit or in any other manner whatsoever, to enforce against complainant, its officers, agents, employès or servants, any of the provisions of, or penalties provided for in the following acts of the legislature of the State of Missouri:

First, an act approved April 14, 1905, entitled:

"An Act to amend article IV, chapter 12 of the Revised Statutes of Missouri of 1899, entitled 'Railroad classification, charges, commissioners,' by adding a new section thereto, to be known as section 1195*a*."

Second, an act approved April 15, 1905, entitled:

"An act entitled 'An act to amend chapter 12 of the Revised Statutes of Missouri, Revision of 1899, entitled "Corporations, private," by repealing section 1194 of said Revised Statutes, being part of article IV of said chapter concerning railroad classification, charges, commissioners, and to enact in lieu thereof the following new sections providing for the regulation of freight charges by railroads and the recovery of penalties for the violation thereof.' "

Third, an act approved February 27, 1907, entitled:

"An act to repeal sections 1191 and 1192 of chapter 12, article 4, Revised Statutes of Missouri, 1899, entitled 'Railroad classification, charges, commissioners,' by striking out sections 1191 and 1192 and enacting the following new sections in lieu thereof to be known as sections 1191 and 1192 and 1192*a*."

Fourth, an act approved March 19, 1907, entitled:

"An act to repeal an act of the 43rd general assembly, approved April 15, 1905, entitled 'An act to amend chapter 12 of the Revised Statutes of Missouri, revision of 1899, entitled "Corporations, private," by repealing section 1194 of said Revised Statutes, being part of article IV of said chapter, concerning railroad classification, charges, commissioners, and to enact in lieu thereof the following

new sections providing for the regulation of freight charges by railroads and the recovery of penalties for the violation thereof; and to repeal an act of the 43rd general assembly, approved April 14, 1905, entitled 'An act to amend article IV, chapter 12, of the Revised Statutes of Missouri, 1899, entitled "Railroad classification, charges, commissioners," by adding a new section thereto, to be known
267 as section 1195*a*, fixing the charges for carrying undressed stone, crushed rock and building or paving brick,' and to enact in lieu thereof certain new sections, to be known as sections 1194, 1194*a*-1, 1194*b*-1 and 1194*c*-1, providing for the regulation of freight charges by railroads and prescribing the punishment for a violation thereof, which new sections shall read as follows:"

Fifth, an act approved March 19, 1907, entitled:

"An act to amend article 4, chapter 12, Revised Statutes of Missouri of 1899 by adding a new section thereto, to be known as section 1195*a*, and relating to freight charges and classifications."

3. The other defendants who are officers, and their successors, are likewise enjoined from enforcing or attempting to enforce any of said statutory enactments.

4. There is no evidence that either defendants Wyeth Hardware Company, Jones-Payne Hat Company, Gordon or Brunswig has threatened or intended to institute any action or proceeding against complainant as averred in the bill of complaint, and the said bill of complaint and the amendments and supplement is upon that ground as to said defendants in this paragraph named, dismissed. If, however, at any future time said defendants or any of them in this paragraph named, should take any action, or threaten or attempt to take any action under either or all of said statutes hereinbefore designated, then and in that case the complainant herein may apply to this Court by supplemental bill or otherwise as it may be advised for further orders in that behalf.

5. It is further ordered, adjudged and decreed that the defendants, or any of them, when the circumstances have changed so that the rates fixed as aforesaid shall yield to complainant a reasonable compensation for the services aforesaid, may apply to this Court by supplemental bill or otherwise, as defendants or either of them may be advised, for further orders in their behalf.

And complainant may at any time by supplemental bill or otherwise bring into the case any person, firm or corporation not expressly subject to this decree, who may attempt or threaten to take
268 any action or institute any proceeding against complainant under any of said statutes hereinbefore designated, to the end that such orders or supplemental decrees may be entered as the facts and equity may warrant and require.

And the Court retains and reserves unto it, jurisdiction over all the parties hereto, and all subjects matter herein not now covered by the pleadings, to the end that such other and further orders and decrees may be made hereafter as may become necessary by reason of any changed condition as to the facts, equities or right that may hereafter take place or arise.

6. The taxable costs of this case including those covered by orders

of the court, heretofore made and hereafter made on motion to tax or retax, and including printing bill of Buxton-Skinner Stationery Company, shall be paid as follows, to-wit:

The one half by complainant and the other half by defendants to be recovered by execution to be issued by the Clerk of this Court upon application of any party in interest.

Done and ordered of record as of March 8th, 1909, in open court this March 22nd, 1909, at Kansas City, Missouri.

SMITH McPHERSON, *Judge.*

269 Afterwards, to-wit, on the 22nd day of March, 1909, a Motion to modify Decree was filed. Said Motion is in words and figures as follows, to-wit:—

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY
vs.
HERBERT S. HADLEY et al.

And Equity Cases No-. 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004, 3006.

Motion.

Now comes complainant in each one of the above numbered cases and separately moves the court to modify and change its opinion and decree in these respects:

1. To strike from the opinion paragraph 4 thereof because it is based upon a misconception, and is an erroneous statement of the law.

2. To strike from paragraph 11 of the opinion these words:

"It being a legislative act, and not a judicial one, this Court can not fix rates. If it could, two and one-half cent passenger rates would be fixed for the stronger roads, and three for the others. But that is for the legislature acting itself with experts, such as the State employed in these case-, or through a Commission with like assistance."

This, for the reason that it was no part of the duty of the court to so decide, and it is directly in conflict with the express findings of fact. At a two and a half cent rate the returns would not be sufficient compensation.

3. To strike from paragraph 11 of the opinion these words:

270 "Each party will pay the costs by such party made, except the compensation of the Master and stenographer. The half of those will be paid by complainants, and the other half by respondents."

This, for the reason that it is contrary to the rules and principles of law and equity and to good conscience.

4. To modify the decree so far as it taxes any costs against complainant, and to re-tax the same, for that there is no reason in equity or good conscience to tax same against it.

FRANK HAGERMAN,
Solicitor for Complainant.

271 Afterwards, to-wit, on the 3rd day of April, 1909, an Amended Motion to Modify Decree was filed. Said Amended Motion is in words and figures as follows, to-wit:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY
vs.
HERBERT S. HADLEY et al.

And Equity Cases Nos. 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004, 3006.

Amended Motion.

Now comes complainant in each and every one of the above entitled causes, and separately amends the motion heretofore filed to modify and change the opinion and decree in each and every one of the said causes, and thereupon further moves the court:

1. To set aside the said decree as entered March 22, 1909, as of March 8, 1909, so far as concerns those defendants who neither appeared nor demurred, nor adopted the answers of the railroad commissioners and attorney general, of which there are twenty-six in the eighteen cases. This, for the reason that the court erroneously made provisions for and against said defendants when they were not before it, and when complainants actually asked to dismiss as to them, to which, counsel for the said officers in open court consented. It is neither right nor just to enter a decree against persons not in court, nor can the court refuse complainant the right to dismiss as to them.

2. To set aside the portion of said decree dismissing the bill as to appearing and answering shippers, for that upon the findings and opinion, as well as upon the pleadings, the laws mentioned in paragraph 2 of the decree so entered as of March 8th, 1909, are confiscatory and void as to the shippers and passengers, and those classes of persons represented by them. Those of them who
272 defended adopted the answer and defense of the state officers. Each complainant is entitled to have the right involved duly established as against them. Because an injunction is found to be unnecessary as to them is no reason for dismissing the

bill, and it is inconsistent to enter such dismissal and then attempt to hold jurisdiction against them in the future as if there had been some adjudication as to their rights.

3. To set aside the provision of said decree as to costs for that the attempt in the decree to cure the error already rendered in taxing the costs, is erroneous. In the original opinion the decision was that each party should pay the costs by such party made, except the compensation of the master and stenographer, half of which should be paid by complainants and the other half by defendants. In open court it was announced that such rule was adopted solely because the defendants were state officers and the state might not appropriate the amount necessary to meet these costs. The supreme court has twice decided this is no excuse and no justification for taxing the costs against the other party. It was conceded by both parties that those shippers who adopted the defense of the state officers and were defended by them ought not to be compelled to pay any additional costs. This concession was agreed to by the court; yet, in the decree as now entered, this concession of both sides and the court is absolutely ignored. The only change made as to the costs is that one-half of all the costs shall be paid by each party. There is no legal excuse or justification to tax any of these costs to complainants; ample money has already been appropriated to the state officers for the purpose of paying the same, and even if it had not been so appropriated, this would have been no reason for making an order that complainant should pay costs.

FRANK HAGERMAN,
Solicitor for Complainant.

273 Afterwards, to-wit, on the 3rd day of April, 1909, a Notice was filed. Said Notice is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General, et al., Defendants.

And Equity Cases Nos. 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004, and 3006.

Notice.

To Herbert S. Hadley, Attorney General, et al., Defendants, and their attorneys of record:

You are hereby notified that complainants will, upon Saturday, April 3rd, 1909, in the federal court room at Kansas City, Missouri, call up before the Honorable Smith McPherson, Judge of said court,

the motion to modify and change the opinion and decrees in the above entitled causes heretofore filed, copy of which was delivered to defendants, and also the amended motion, copy of which is herewith delivered to you.

FRANK HAGERMAN,
Solicitor for Complainant.

Received copy of above notice and of the motion and amended motion therein referred to this 27th day of March, 1909.

SANFORD B. LADD,
Solicitors for Defendants.

274 Afterwards, to-wit, on the 17th day of April, A. D., 1911, the same being a day of the regular November term of said Court an amended final decree was filed and entered. Said amended final decree is in words & figures as follows:

In the Circuit Court of the United States, Western Division of the Western District of Missouri, at Kansas City.

No. 3001.

ST. JOSEPH & GRAND ISLAND RAILWAY COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General, et al., Defendants.

Amended Final Decree.

This case heretofore came on for hearing, the parties appearing by counsel, and was submitted upon the motion and amended motion to change and modify the decree of March 8, 1909, and the court being fully advised in the premises, now upon this 17th day of April, 1909, amends the said decree heretofore entered so that same shall read as follows:

The above entitled cause this March 8th, 1909, comes on for final decree upon the evidence and stipulations upon file and of record herein, the case having heretofore been fully argued and fully submitted and taken under advisement. And now at this time the court being fully advised in the premises, the parties appearing by their respective counsel for reasons stated in an opinion by the trial judge and findings of fact signed and filed herein, adjudges and decrees:

1. The maximum freight laws of Missouri of 1905 and
275 1907, and the passenger rate law of 1907, mentioned in paragraph 2 hereof, and set forth in the original bill and amendments and supplements thereto, are unreasonable and confiscatory, do not afford the complainant any fair or reasonable return upon the value of its property, and to comply therewith would take the property of complainant without due process of law. None of the provisions thereof should or can be rightfully enforced against com-

plainant, its officers, agents or employès. A finding of fact has been prepared and filed, and is hereby referred to as if made part thereof.

2. Defendants Elliott W. Major, Attorney General of the State of Missouri, John A. Knott, H. R. Oglesby and Frank A. Wightman, Railroad Commissioners of the State of Missouri, and each of them, their agents, employès and successors, are hereby enjoined from enforcing or attempting, directly or indirectly, by suit or in any other manner whatsoever, to enforce against complainant, its officerse, agents employès or servants, any of the provisions of, or penalties provided for in the following acts of the legislature of the state of Missouri:

First, an act approved April 14, 1905, entitled:

"An Act to amend article IV, chapter 12 of the Revised Statutes of Missouri of 1899, entitled 'Railroad classification, charged, commissioners,' by adding a new section thereto, to be known as section 1195*a*."

Second, an act approved April 15, 1905, entitled:

"An Act, entitled 'An Act to amend chapter 12 of the Revised Statutes of Missouri, revision of 1899, entitled "Corporations, private," by repealing section 1194 of said Revised Statutes, being part of article IV of said chapter concerning railroad classification—charges—commissioners, and to enact in lieu thereof the following new sections providing for the regulation of freight charged by railroads and the recovery of penalties for the violation thereof.' "

Third, an act approved February 27, 1907, entitled:

"An Act to repeal sections 1191 and 1192 of chapter 12, article 4, Revised Statutes of Missouri, 1899, entitled 'Railroad classification—charges—commissioners,' by striking out sections 1191 and 1192 and enacting the following new sections in lieu thereof, to be known as sections 1191 and 1192 and 1192*a*."

Fourth, an act approved March 19, 1907, entitled:

"An act to repeal an act of the 43rd general assembly, ap-
276 proved April 15, 1905, entitled 'An act to amend chapter 12 of the Revised Statutes of Missouri, revision of 1899, entitled "Corporations, private," by repealing section 1194 of said Revised Statutes, being part of article IV of said chapter, concerning railroad classification, charges, commissioners, and to enact in lieu thereof the following new sections providing for the regulation of freight charges by railroads, and the recovery of penalties for the violation thereof,' and to repeal an act of the 43rd general assembly, approved April 14, 1905, entitled 'An act to amend Article IV, chapter 12 of the Revised Statutes of Missouri, 1899, entitled "Railroad classifications, charges, commissioners," by adding a new section thereto, to be known as section 1195*a*, fixing the charges for carrying undressed stone, crushed rock and building or paving brick,' and to enact in lieu thereof certain new sections, to be known as sections 1194, 1194*a*-1, 1194*b*-1 and 1194*c*-1, providing for the regulation of freight charges by railroads and prescribing the punishment for a violation thereof, which new sections shall read as follows:"

Fifth, an act approved March 19, 1907, entitled:

"An act to amend article 4, chapter 12, Revised Statutes of Mis-

souri of 1899, by adding a new section thereto, to be known as section 1195*a*, and relating to freight charges and classifications."

3. The other defendants who are officers, and their successors, are likewise enjoined from enforcing or attempting to enforce any of said statutory enactments.

4. There is no evidence that either defendants, Wyeth Hardware Company, Jones-Payne Hat Company, Gordon or Brunsweig, has threatened or intended to institute any action or proceeding against complainant as averred in the bill of complaint, but they have adopted the answers of the Railroad Commissioners and Attorney General. The said bill of complaint and the amendments and supplement to the extent and so far only as it seeks present injunctive relief against them, is upon that ground as to said defendants in this paragraph named, dismissed without prejudice. If, however, at any future time said defendants or either of them in this paragraph named, should take any action, or threaten or attempt to take any action under either or all of said statutes hereinbefore designated, then and in that case the complainant herein may apply to this court by supplemental bill or otherwise as it may be advised, for further orders in that behalf.

277 5. It is further ordered, adjudged and decreed that the defendants, or any of them, when the circumstances have changed so that the rates fixed as aforesaid shall yield to complainant reasonable compensation for the services aforesaid, may apply to this court by supplemental bill or otherwise, as defendants or either of them may be advised, for further orders in their behalf.

And complainant may at any time by supplemental bill of otherwise bring into the case any person, firm or corporation not expressly subject to this decree, who may attempt or threaten to take any action or institute any proceedings against complainant under any of said statutes hereinbefore designated, to the end that such orders or supplemental decree may be entered as the facts and equity may warrant and require.

And the court retains and reserves unto it, jurisdiction over all the parties hereto, and all subjects matter herein, not now covered by the pleadings, to the end that such other and further orders and decrees may be made hereafter as may become necessary by reason of any changed condition as to the facts, equities or rights that may hereafter take place or arise.

6. The taxable costs of the case including those covered by orders of the court, heretofore made or hereafter made on motion to tax or retax, and including printing bill of Buxton-Skinner Stationery Company shall be paid as follows, to-wit: The one-half by complainant and the other half by defendants who are Railroad Commissioners and the Attorney General, to be recovered by execution to be issued by the clerk of this court upon application of any party in interest.

7. Some of the defendants having announced their intention to appeal, it is now ordered that no appeal shall supersede the injunctive portions of this decree, but pending any such appeal the

278 complainants shall be permitted to charge the rates permitted by sections 1191 and 1192 of the Revised Statutes of Missouri,

1899, the same as if the Passenger Rate Act approved February 27, 1907, and herein held to be confiscatory, had not been passed. Complainant having by order herein of June 17, 1907, been required to temporarily adopt the rate fixed by said Passenger Rate Act, shall be and is hereby permitted, free from the interference of the parties and classes represented by them, who are hereby ordered not to interfere, to restore and put in force the rates authorized by said sections 1191 and 1192, this court reserving power and jurisdiction from time to time to enforce, change and modify this paragraph of this decree, as well as to protect the complainant in being restored to the right of which said order temporarily deprived it.

8. This decree shall be binding upon and enforceable against the said defendants, not dismissed, their assistants, agents, attorneys and employès, and any class or classes of persons or officers represented by them.

(Signed) SMITH McPHERSON, *Judge.*

279 Afterwards, to-wit, on the 6th day of March, 1911, declinations to join in appeal were filed. Said declinations are in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 3001.

THE ST. JOSEPH AND GRAND ISLAND RAILWAY COMPANY, Complainant,

vs.

JOHN A. KNOTT, H. R. OGLESBY and FRANK A. WIGHTMAN, Railroad and Warehouse Commissioners; Elliott W. Major, Attorney General of the State of Missouri; Joseph M. Patterson, Charles E. Moss and George J. Dodd, Judges of the County Court of Jackson County, Missouri; Arthur C. Warner, Treasurer of Jackson County, Missouri; Wyeth Hardware and Manufacturing Company, a Corporation, and Jones-Payne Hat Company, a Corporation, and Thomas P. Gordon and Albert J. Brunswig, Defendants.

To Joseph M. Patterson, Charles E. Moss and George J. Dodd, and Hugh C. Gilbert, Edward L. Martin and Edward E. Axline, as successors respectively to said Joseph M. Patterson, Charles E. Moss, and George J. Dodd, in the offices of judges of the County Court of said Jackson County; Arthur C. Warner and Overton H. Gentry, Jr., as successor to said Arthur C. Warner in the office of Treasurer of said Jackson County; Wyeth Hardware and Manufacturing Company, Jones-Payne Hat Company, Thomas P. Gordon and Albert J. Brunswig:

Each of you is hereby invited to join with the undersigned in a petition for an appeal in the above entitled cause to the Supreme Court of the United States to reverse the decree in the above entitled cause, rendered on the 8th day of March, 1909, as amended by the

decree herein entered on the 17th day of April, 1909, or you will be deemed to have acquiesced in said decree as amended, and we shall present said petition for an appeal and prosecute said appeal without joining you as a party.

280 Said petition for an appeal will be presented to the said Circuit Court for allowance, at the court room of said court, in Kansas City, Jackson County, Missouri, on Monday the 6th day of March, 1911, at 9 o'clock A. M., or as soon thereafter as said petition can be heard.

ELLIOTT W. MAJOR,
Attorney General of the State of Missouri;
JOHN A. KNOTT,
H. R. OGLESBY,
FRANK A. WIGHTMAN,
Railroad and Warehouse Commissioners, Defendants.
By ELLIOTT W. MAJOR,
Attorney General;
JOHN M. ATKINSON,
Assistant Attorney General;
SANFORD B. LADD,
Counsel for said Defendants.

Service of the above is accepted this 25th day of February, 1911 and we, the undersigned, severally decline to join in said petition for an appeal.

Witnesses to Signatures:

CALEB S. MONROE.	JOSEPH M. PATTERSON.
CALEB S. MONROE.	CHARLES E. MOSS.
PORTER B. GODARD,	H. C. GILBERT.
PORTER B. GODARD.	E. L. MARTIN.
PORTER B. GODARD,	E. E. AXLINE.
CALEB S. MONROE.	GEORGE J. DODD.
CALEB S. MONROE.	O. H. GENTRY, JR.
CALEB S. MONROE.	ARTHUR C. WARNER.

281 In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 3001.

THE ST. JOSEPH AND GRAND ISLAND RAILWAY COMPANY, Complainant,

vs.

JOHN A. KNOTT, H. R. OGLESBY and FRANK A. WIGHTMAN, Railroad and Warehouse Commissioners; Elliott W. Major, Attorney General of the State of Missouri; Joseph M. Patterson, Charles E. Moss and George J. Dodd, Judges of the County Court of Jackson County, Missouri; Arthur C. Warner, Treasurer of Jackson County, Missouri; Wyeth Hardware and Manufacturing Company, a Corporation, and Jones-Payne Hat Company, a Corporation; and Thomas P. Gordon and Albert J. Brunswig, Defendants.

To Joseph M. Patterson, Charles E. Moss and George J. Dodd, and Hugh C. Gilbert, Edward L. Martin and Edward E. Axline, as successors respectively to said Joseph M. Patterson, Charles E. Moss, and George J. Dodd, in the offices of judges of the County Court of said Jackson County; Arthur C. Warner and Overton H. Gentry, Jr., as successor to said Arthur C. Warner in the office of Treasurer of said Jackson County; Wyeth Hardware and Manufacturing Company, Jones-Payne Hat Company, Thomas P. Gordon and Albert J. Brunswig:

Each of you is hereby invited to join with the undersigned in a petition for an appeal in the above entitled cause to the Supreme Court of the United States to reverse the decree in the above entitled cause, rendered on the 8th day of March, 1909, as amended by the decree herein entered on the 17th day of April, 1909, or you will be deemed to have acquiesced in said decree as amended, and we shall present said petition for an appeal and prosecute said appeal without joining you as a party.

282 Said petition for an appeal will be presented to the said Circuit Court for allowance, at the court room of said court, in Kansas City, Jackson County, Missouri, on Monday the 6th day of March, 1911, at 9 o'clock A. M., or as soon thereafter as said petition can be heard.

ELLIOTT W. MAJOR,
Attorney General of the State of Missouri;
JOHN A. KNOTT,
H. R. OGLESBY,
FRANK A. WIGHTMAN,
Railroad and Warehouse Commissioners, Defendants.
By ELLIOTT W. MAJOR,
Attorney General;
JOHN M. ATKINSON,
Assistant Attorney General;
SANFORD B. LADD,
Counsel for said Defendants.

Service of the above is accepted this 28th day of February, 1911, and we, the undersigned, severally decline to join in said petition for an appeal.

JOHN W. WILSON.

Witness to Signature:
WYETH HDW. & MFG. CO.
J. A. WARNER, *Sec'y.*

283 In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 3001.

THE ST. JOSEPH AND GRAND ISLAND RAILWAY COMPANY, Complainant,

vs.

JOHN A. KNOTT, H. R OGLESBY, and FRANK A. WIGHTMAN, Railroad and Warehouse Commissioners; Elliott W. Major, Attorney General of the State of Missouri; Joseph M. Patterson, Charles E. Moss and George J. Dodd, Judges of the County Court of Jackson County, Missouri; Arthur C. Warner, Treasurer of Jackson County, Missouri; Wyeth Hardware and Manufacturing Company, a corporation, and Jones-Payne Hat Company, a corporation, and Thomas P. Gordon and Albert J. Brunswig, Defendants.

To Joseph M. Patterson, Charles E. Moss and George J. Dodd, and Hugh C. Gilbert, Edward L. Martin and Edward E. Axline, as successors respectively to said Joseph M. Patterson, Charles E. Moss, and George J. Dodd, in the offices of judges of the County Court of said Jackson County; Arthur C. Warner, and Overton H. Gentry, Jr., as successor to said Arthur C. Warner in the office of Treasurer of said Jackson County; Wyeth Hardware and Manufacturing Company, Jones-Payne Hat Company, Thomas P. Gordon and Albert J. Brunswig:

Each of you is hereby invited to join with the undersigned in a petition for an appeal in the above entitled cause to the Supreme Court of the United States to reverse the decree in the above entitled cause, rendered on the 8th day of March, 1909, as amended by the decree herein entered on the 17th day of April, 1909, or you will be deemed to have acquiesced in said decree as amended, and we shall present said petition for an appeal and prosecute said appeal without joining you as a party.

284 Said petition for an appeal will be presented to the said Circuit Court for allowance, at the court room of said court, in Kansas City, Jackson County, Missouri, on Monday the 6th day

of March, 1911, at 9 o'clock A. M., or as soon thereafter as said petition can be heard.

ELLIOTT W. MAJOR,
Attorney General of the State of Missouri;
JOHN A. KNOTT,
H. R. OGLESBY,
FRANK A. WIGHTMAN,
Railroad and Warehouse Commissioners, Defendants;
By ELLIOTT W. MAJOR,
Attorney General;
JOHN M. ATKINSON,
Assistant Attorney General;
SANFORD B. LADD,
Counsel for said Defendants.

Service of the above is accepted this 27th day of February, 1911, and we, the undersigned, severally decline to join in said petition for an appeal.

A. J. BRUNSWIG.

Witness to Signature,
JOHN W. WILSON.

285 In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 3001.

THE ST. JOSEPH AND GRAND ISLAND RAILWAY COMPANY, Complainant,

vs.

JOHN A. KNOTT, H. R. OGLESBY and FRANK WIGHTMAN, Railroad and Warehouse Commissioners; Elliott W. Major, Attorney General of the State of Missouri; Joseph M. Patterson, Charles E. Moss and George J. Dodd, Judges of the County Cou-ty of Jackson County, Missouri; Arthur C. Warner, Treasurer of Jackson County, Missouri; Wyeth Hardware and Manufacturing Company, a corporation, and Jones-Payne Hat Company, a corporation; and Thomas P. Gordon and Elbert J. Brunswig, Defendants.

To Joseph M. Patterson, Charles E. Moss and George J. Dodd, and Hugh C. Gilbert, Edward L. Martin and Edward E. Axline, as successors respectively to said Joseph M. Patterson, Charles E. Moss, and George J. Dodd, in the offices of judges of the County Court of said Jackson County; Arthur C. Warner and Overton H. Gentry, Jr., as successor- to said Arthur C. Warner in the office of Treasurer of said Jackson County; Wyeth Harwware and Manufacturing Company, Jones-Payne Hat Company, Thomas P. Gordon and Albert J. Brunswig:

Each of you is hereby invited to join with the undersigned in a petition for an appeal in the above entitled cause to the Supreme

Court of the United States to reverse the decree in the above entitled cause, rendered on the 8th day of March, 1909, as amended by the decree herein entered on the 17th day of April, 1909, or you will be deemed to have acquiesced in said decree as amended, and we shall present said petition for an appeal and prosecute said appeal without joining you as a party.

286 Said petition for an appeal will be presented to the said Circuit Court for allowance, at the court room of said court, in Kansas City, Jackson County, Missouri, on Monday the 6th day of March, 1911, at 9 o'clock A. M., or as soon thereafter as said petition can be heard.

ELLIOTT W. MAJOR,
Attorney General of the State of Missouri.
JOHN A. KNOTT,
H. R. OGLESBY,
FRANK A. WIGHTMAN,
Railroad and Warehouse Commissioners, Defendants.
By ELLIOTT W. MAJOR,
Attorney General;
JOHN M. ATKINSON,
Assistant Attorney General;
SANFORD B. LADD,
Counsel for Said Defendants.

Service of the above is accepted this 27th day of February, 1911, and we, the undersigned, severally decline to join in said petition for an appeal.

JONES-PAYNE HAT CO.,
By MINITRY JONES, *Prest.*

Witness to Signature:
JOHN W. WILSON.

287 Afterwards, to-wit, on the 6th day of March, 1911, an Affidavit was filed. Said affidavit is in words and figures as follows:

ST. JOSEPH Mo., *Feb.* 28, 1911.

SANFORD B. LADD,
Gage, Ladd & Small,
Kansas City, Mo.

DEAR SIR: I hereby certify that after making thorough and diligent search for one Thomas P. Gordon, find that the said Thomas P. Gordon died in St. Joseph, Mo., January 2, 1910, aged 86 years.

JOHN W. WILSON.

Subscribed and sworn to before me, a Notary Public, within and for Buchanan County, State of Missouri, this 28th day of February, 1911.

[SEAL.] WILLIAM H. SHERMAN.

My commission expires November 1st, 1913.

288 Afterwards, to-wit, on the 6th day of March, 1911, the defendants' assignment of errors was filed. Said assignment of errors is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 3001.

THE ST. JOSEPH AND GRAND ISLAND RAILWAY COMPANY, Complainant,

vs.

JOHN A. KNOTT, H. R. OGLESBY and FRANK WIGHTMAN, Railroad and Warehouse Commissioners; Elliott W. Major, Attorney General of the State of Missouri; Joseph M. Patterson, Charles E. Moss and George J. Dodd, Judges of the County Court of Jackson County, Missouri; Arthur C. Warner, Treasurer of Jackson County, Missouri; Wyeth Hardware and Manufacturing Company, a Corporation, and Jones-Payne Hat Company, a corporation; and Thomas P. Gordon and Elbert J. Brunswig, Defendants.

Assignment of Errors.

Now come John A. Knott, H. R. Oglesby and Frank A. Wightman, Railroad and Warehouse Commissioners, and Elliott W. Major, Attorney General of the State of Missouri, defendants in the above entitled cause, and aver that in the record and proceedings and decree in the above entitled cause, there is manifest error, in this:

1. The court erred in adjudging and decreeing, by its amended decree, that the maximum freight rate laws of Missouri of 1905 and 1907 are unreasonable and confiscatory and do not afford the complainant any fair or reasonable return upon the value of its property, and that to comply therewith would take the property of complainant without due process of law; because the evidence shows that said laws are reasonable and compensatory, and that they do afford the complainant a fair and reasonable return upon the value of its property; and upon the evidence in the case, the complainant's bill and its amended and supplemental bill, in so far as they sought for any relief against, or brought into question the validity of said maximum freight rate laws, should have been dismissed.

2. The court erred in its amended decree in thereby adjudging and decreeing that the defendant, Elliott W. Major, Attorney General of the State of Missouri, be enjoined from enforcing, or attempting, directly or indirectly, by suit or in any other manner whatsoever, to enforce against the complainant, its officers, agents, employés or servants, any of the provisions of or penalties provided for in the acts of the Legislature of the State of Missouri, mentioned in said decree, and approved, respectively, April 14, 1905, April 15, 1905, and two approved March 19, 1907.

3. The court erred in its amended decree in thereby adjudging and decreeing that the defendants, John A. Knott, H. R. Oglesby

and Frank A. Wightman, Railroad Commissioners of the State of Missouri, be enjoined from enforcing, or attempting, directly
289 or indirectly, by suit or in any other manner whatsoever, to enforce against the complainant, its officers, agents, employés or servants, any of the provisions of or penalties provided for in the acts of the Legislature of the State of Missouri, mentioned in said decree, and approved, respectively, April 14, 1905, April 15, 1905, and two approved March 19, 1907.

4. The court erred in decreeing that the maximum freight rate laws of 1905 and 1907 are unreasonable and confiscatory, do not afford the complainant any fair or reasonable return upon the value of its property, and that to comply therewith would take the property of complainant without due process of law; because the evidence in the case is not sufficient to overcome the presumption in favor of the validity of those laws and the evidence does not establish clearly and beyond all doubt their invalidity.

5. The court erred in decreeing that the freight rate laws of 1905 and 1907 were confiscatory and therefore deprived the complainant of its property without due process of law, because the burden of proof upon that issue was upon the complainant, and that burden was not sustained. The exact gross revenue from intrastate business for any given period was easy of ascertainment. The ascertainment of the expense of earning that revenue was difficult by reason of the fact that interstate and intrastate freight were transported in the same trains and often in the same cars. It was in the power of the complainant, at any time during the litigation, to have determined, by actual observation and investigation for a period which should be typical, the volume of freight, both intrastate and interstate, carried on each of its trains within the State of Missouri during such period, the revenue from each class of freight and also, quite closely, the expense of moving each of said trains within the State, and to have exhibited to the court the result of such observation and investigation. The court would thus have been enabled to determine approximately how much of the total expense of moving said trains should be assigned to the intrastate and interstate freight, respectively, contained in them.

No evidence of this character was adduced, no tests of this kind made. Upon this question the court was left to reach a conclusion upon the opinion of witnesses. No decree should have been rendered for complainant until this evidence of actual facts of vital importance, which was at its command, had been adduced to the court.

6. The court erred in adjudging and decreeing in its amended final decree herein that the maximum freight rate laws of Missouri, of 1905 and 1907, were unreasonable and confiscatory, and did not afford the complainant any fair or reasonable return upon the value of its property, and that to comply therewith would take the property of complainant without due process of law; and that none of the provisions thereof should or can be rightfully enforced against the complainant, its officers, agents, or employés.

Because it appears from the evidence that a very large part of

the intrastate freight transported by the complainant is not governed as to the rates to be charged therefor by the Acts of 1905 and the Acts of 1907, but that the maximum rates for the transportation thereof are fixed by the State Board of Railroad and Warehouse Commissioners, by authority of law, conferring upon them that power. It further appears from the evidence, that the complainant has not been charging for the transportation of such freight the rates so fixed by the State Board of Railroad and Warehouse Commissioners, but rates less than those so fixed. But the com-
290 plainant failed to show and made no effort to show what its revenue from the intrastate freight business would have been had it charged the rates allowed by the State Board of Railroad and Warehouse Commissioners for such portion of the freight carried by it, as was not governed by the Acts of 1905 and 1907; and therefore there is no evidence in the case that if the complainant had charged such rates and had also complied with the Acts of 1905 and 1907, it would not have received a revenue from its intrastate freight business which would have afforded it a fair, adequate and just return for doing such business. If it had charged what it might, according to the law of the State, have charged for the transportation of such freight, its receipts for doing its entire intrastate freight business might, for any evidence which appears in the case, have been sufficient to afford it all the net profits to which it was entitled.

7. The court erred in adjudging and decreeing in the amended final decree that the maximum freight rate laws of Missouri of 1905 and 1907 are unreasonable and confiscatory and do not afford the complainant any fair or reasonable return upon the value of its property, and that to comply therewith would take the property of complainant without due process of law, because the said acts of 1905 took effect on the 16th day of June, 1905, and the original bill herein, alleging the unconstitutionality of said Acts of 1905, and seeking to enjoin their enforcement, was filed by the complainant on said 16th day of June, 1905, and on the same day a restraining order was issued herein, enjoining the defendants, the Railroad and Warehouse Commissioners, "from taking or making out or printing or delivering any schedule of rates for complainant, containing the maximum rates fixed by said Acts." And on the 12th day of July, 1905, the court continued said restraining order as a temporary injunction, which was in force as against said defendants from said date until the final decree was entered. Therefore, at the time of the filing of said bill and the issue of said restraining order, the defendants, said Railroad and Warehouse Commissioners, because the law had not yet taken effect, had enjoyed no opportunity to revise the then existing schedule of rates.

The said defendants, Railroad and Warehouse Commissioners, had authority, under the law, to fix maximum rates for the transportation of that portion of the intrastate freight for which rates were not fixed by the Acts of 1905, which said portion was very large in volume and produced to the complainant much the larger part of its entire revenue for the transportation of intrastate freight. The said Railroad and Warehouse Commissioners might, if they had not been

prevented by the restraining order and temporary injunction herein, have fixed such rates for the transportation of said portion of such intrastate freight, and made schedules therefor, which schedules should also have embraced the maximum rates for the commodities mentioned in the said Acts of 1905, as would have permitted the complainant, while observing said schedules and said acts of 1905, to have derived from its intrastate freight business, as a whole, a gross revenue sufficient to have yielded to it a fair, just and adequate net return or profit from the doing of its said intrastate freight business. The complainant should have deferred the institution of this suit until the said Board of Railroad and Warehouse Commissioners had fixed rates and adopted schedules so low as to disable the complainant from realizing an adequate revenue upon its entire intrastate freight business.

Therefore, the action was prematurely brought; and for
291 this reason no restraining order or temporary injunction or final decree should have been rendered as to either of said maximum freight rate Acts.

8. The court erred in adjudging and decreeing by its amended final decree that the passenger rate law of 1907, approved February 27, 1907, is unreasonable and confiscatory and does not afford the complainant any fair or reasonable return upon the value of its property, and that to comply therewith would take the property of complainant without due process of law; because, upon the evidence in the case, said passenger rate law is reasonable and compensatory and does afford the complainant a fair and reasonable return upon the value of its property; and upon the evidence in the case, the complainant's bill, and its amended and supplemental bills, in so far as they sought for any relief against or brought into question the validity of said passenger rate law of 1907, should have been dismissed.

9. The court erred in decreeing that the passenger rate law of 1907 is unreasonable and confiscatory, does not afford the complainant any fair or reasonable return upon the value of its property, and that to comply therewith would take the property of complainant without due process of law; because the evidence in the case is not sufficient to overcome the presumption in favor of the validity of the law, and the evidence does not establish clearly and beyond all doubt its invalidity.

10. The court erred in its amended decree in thereby adjudging and decreeing that the defendant, Elliott W. Major, Attorney General of the State of Missouri, be enjoined from enforcing, or attempting, directly or indirectly, by suit or in any other manner whatsoever, to enforce against the complainant, its officers, agents, employés or servants, any of the provisions of or penalties provided for in said Act of the Legislature of the State of Missouri, mentioned in said decree and approved February 27, 1907.

11. The court erred in its amended decree in thereby adjudging and decreeing that the defendants, John A. Knott, H. R. Oglesby and Frank A. Wightman, Railroad Commissioners of the State of Missouri, be enjoined from enforcing, or attempting, directly or indi-

rectly, by suit or in any other manner whatsoever, to enforce against the complainant, its officers, agents, employés or servants, any of the provisions of or penalties provided for in said act of the Legislature of the State of Missouri, mentioned in said decree and approved February 27, 1907.

12. The defendants, John A. Knott, H. R. Oglesby and Frank A. Wightman, Railroad and Warehouse Commissioners, for themselves assert that the court erred in that part of its decree whereby it enjoined them from enforcing, or attempting, directly or indirectly, to enforce against the complainant, its officers, agents, employés or servants, any of the provisions of or the penalties provided for in the passenger rate Act, approved February 27, 1907; because, under the laws of the State of Missouri, they have no functions of any kind to perform in relation to rates for the carriage of passengers, nor do such laws vest in them any authority, or devolve upon them any duties to be performed by them, directly or indirectly, to require or compel obedience to any laws relating to rates for the carriage of passengers.

13. The court erred in permitting the complainant, against the objection of the defendants to file herein its alleged amended and supplemental bill of complaint and the amendment thereto, because the original bill was based upon the Acts of the 43rd
292 General Assembly of the State of Missouri, approved April 14, 1905, and April 15, 1905, which fixed maximum rates for intrastate freight, and the alleged amended and supplemental bill and the amendment thereto is based upon the Acts of the 44th General Assembly of the State of Missouri, approved March 19, 1907, which repealed said Acts of 1905 and established a new maximum of rates for intrastate freight, and the Act of the 44th General Assembly of the State of Missouri, approved March 19, 1907, fixing rates for the transportation of fruit, and the Act of the 44th General Assembly of the State of Missouri, approved February 27, 1907, fixing a maximum schedule of rates for passenger traffic, and the matters set forth in the said alleged amended and supplemental bill of complaint and the amendment thereto, are not germane to or supplemental of the original bill of complaint herein.

14. The court erred in permitting the complainant, against the objection of defendants, to file the alleged amended and supplemental bill of complaint and the amendment thereto, so far as the same relates to the Act of the 44th General Assembly of the State of Missouri, approved February 27, 1907, fixing a maximum schedule of passenger rates, because the matters set forth in said alleged amended and supplemental bill, and the amendment thereto, relative to said Act of the 44th General Assembly of the State of Missouri, fixing a maximum schedule of passenger rates, are not germane to or supplemental of any of the matters alleged in the original bill.

15. The court erred in overruling the demurrer of the defendants to the alleged amended and supplemental bill of complaint and the amendment thereto, because the matters contained in said alleged amended and supplemental bill of complaint and the amendment thereto, are not germane to or supplemental of the original bill, and if they constitute any cause of action whatever, constitute a new,

original and independent cause of action not connected with or dependent upon the original cause of action, and one that accrued, if at all, long after the original bill was filed.

16. The court erred in overruling the demurrer of defendants to the portions and paragraphs of the alleged amended and supplemental bill of complaint and the amendment thereto, relative to the Act of the 44th General Assembly of the State of Missouri, fixing a maximum schedule of passenger rates, because such portions and paragraphs of the alleged amended and supplemental bill of complaint and the amendment thereto, are not germane to or supplemental of the original bill of complaint, and constitute, if anything, a new and independent cause of action not connected with or dependent upon the original cause of action, and one that accrued, if at all, long after the original bill was filed.

17. The court erred in granting to the complainant the relief asked, with respect to the Act of the 44th General Assembly of the State of Missouri, fixing a maximum schedule of passenger rates, because it was not authorized to take jurisdiction of that matter upon a bill of complaint filed as an amendment or supplement of a bill based upon Acts of the 43rd General Assembly of the State of Missouri, which were confined to freight rates and had been repealed.

18. The court erred in enjoining the defendant, Elliott W. Major, Attorney-General of the State of Missouri, from prosecuting the suits for injunctive relief, instituted by his predecessor in office, Herbert S. Hadley, in the State Court of Missouri, against the complainant prior to the filing of the alleged amended and supplemental bill of complaint herein.

293 19. The court erred in finding that the expense of doing the intrastate business over the interstate is greater for carrying freight by at least fifty per cent. By this language in the finding is meant at least fifty per cent more in proportion to revenue, while upon the weight of credible evidence in the case, the expense of doing the intrastate freight business over the interstate is not greater than thirty per cent per ton per mile.

20. The court erred in finding that the evidence shows that the cost of doing the intrastate freight business, as between intrastate and interstate, apportioned upon the revenue basis with added extra cost, brings a result which is fair, representative or just.

21. The court erred in finding that aside from the revenue basis, the evidence shows that the amount ascertained by the court in any of the cases, as the expense and extra cost of doing the intrastate freight business, is fair or justly represents the expense of doing the intrastate freight business.

The appellants assert, on the contrary, that aside from the revenue basis, there is no evidence in the case from which the result as found by the court as to the expense of doing the intrastate freight business can be reached.

22. The court erred in finding that the proper method of dividing the total expense of doing complainant's freight business in the State and assigning the proper proportion thereof to the intrastate freight business, was by the application of the revenue theory, and in accordance with that theory, dividing the total expense between

the two classes of business in proportion to the revenue derived from each, and then to the portion thus assigned to the intrastate freight business, adding such an amount as would represent fifty per cent greater expense in proportion to revenue for the intrastate than for the interstate business. The consequence was to burden the intrastate freight business with a portion of the total expense very largely in excess of its just proportion and a much greater share thereof than was actually incurred in doing that business.

The court should have found that the proper method of ascertaining that part of the total State freight expense justly assignable to the intrastate freight, was by determining, as closely as possible, the average cost per ton mile of handling and transporting intrastate and interstate freight, respectively. The average cost per ton per mile deducted from the average revenue per ton per mile (which is easily ascertainable from the evidence) would have produced the net revenue per ton per mile derived from each class of freight. The court erred in its finding which rejected this method, by the application of which the evidence in the case shows that complainant might have complied with the freight rate Acts of 1905 and 1907, and would still have derived from the doing of its intrastate business an adequate profit fully equivalent to any net return to which it is by law entitled.

23. The court erred in finding that the sum total of the extra cost of doing the intrastate freight business would not be changed if ascertained according to the ton mile theory.

On the contrary, the evidence shows clearly that if the expense of doing the intrastate freight business be ascertained by the application of the ton mile theory, that expense would be found to be very much less than the amount found by the court; so much less as to leave to the complainant a reasonable net return for doing the business.

24. The court erred in finding that the revenue basis is the
294 proper method of ascertaining the expense of the intrastate passenger traffic. In adopting that method the court divided the total expense of the passenger business done in the State between the intrastate and the interstate business by assigning to each class such a proportion of such total expense as the revenue from each class of business bore to the total revenue from the State passenger traffic, and then adding to the proportion thus ascertained for the intrastate, such an amount as would represent twenty-five per cent greater expense in proportion to revenue for the intrastate than for the interstate business. The result of the application of this method was to charge the intrastate business with a much larger share of the total expense than was actually incurred in doing that business.

The true method is to ascertain the average revenue and expense of carrying a passenger one mile, in each class of business, and the difference would be the net revenue or deficit on each passenger mile.

The evidence shows that the net revenue per passenger mile is greater in the intrastate than in the interstate business, and that the net revenue from its intrastate passenger business, if charged for at the rates fixed by the Act of February 27, 1907, affords to the complainant a reasonable and adequate return for doing the business.

25. The court erred in finding that the expense of doing the State passenger business over the interstate is at least twenty-five per cent; this language meaning twenty-five per cent more in proportion to revenue. The evidence in the case does not support this finding.

26. The court erred in adopting the tables of earnings and expenses of the complainant, set forth in the finding of facts, because the said tables of expenses and of earnings did not cover any fairly representative period of operations of the complainant, and because said tables of expenses and earnings are not supported by any competent evidence in the case.

27. The court erred in finding that the short line between two competitive points, necessarily fixes the rate. If the rate is thus fixed it is because the complainant and the other railroad companies of the State have agreed with each other that it shall be so fixed.

28. The court erred in finding that it was conceded by the experts that the companies accurately and honestly kept their books, showing the facts set out in the findings of the court. The books of the companies did not show the facts set out in said findings, nor did the experts for the State concede that they did.

29. The court erred in finding (as stated in the opinion), that evidence in the case tended to show that a large number of men have been discharged from the service of the railroad companies by reason of the reduction of the rates. Not a reduction in rates, but a general depression in business and the want of business to keep the men employed, was the cause of their discharge.

30. The court erred in finding that the value of the complainant's franchise, included in the total valuation of its property as fixed by the State Board of Equalization, was so small a per cent of such total valuation as to make no appreciable difference in the result of the case.

On the contrary, the evidence shows that the value of the franchise was a substantial part of such total valuation.

31. The court erred in finding that if the value of complainant's franchise were altogether omitted from the value of its property, it could not have obtained from the operation of its property, or from the doing of the intrastate freight business, the return to which it is entitled.

295 32. The court erred in finding that the complainant was entitled to a return upon the value of its franchise.

Wherefore, these defendants pray that the said amended final decree be reversed, and that said court may be directed to enter a decree dismissing the complainant's bill, its amended and supplemental bill, and the amendment thereto.

ELLIOTT W. MAJOR,
Attorney General;
JOHN M. ATKINSON,
Assistant Attorney General;
SANFORD B. LADD,

Solicitors for Defendants John A. Knott, H. R. Oglesby and Frank A. Wightman, Railroad and Warehouse Commissioners, and Elliott W. Major, Attorney General of the State of Missouri.

296 Afterwards, to wit, on the 6th day of March, 1911, Defendants' Petition for Appeal was filed. Said Petition for Appeal is in words and figures as follows:—

297 In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 3001.

THE ST. JOSEPH AND GRAND ISLAND RAILWAY COMPANY, Complainant,

v.

JOHN A. KNOTT, H. R. OGLESBY and FRANK A. WIGHTMAN, Railroad and Warehouse Commissioners; Elliott W. Major, Attorney General of the State of Missouri; Joseph M. Patterson, Charles E. Moss and George J. Dodd, Judges of the County Court of Jackson County, Missouri; Arthur C. Warner, Treasurer of Jackson County, Missouri; Wyeth Hardware and Manufacturing Company, a Corporation, and Jones-Payne Hat Company, a Corporation, and Thomas P. Gordon and Albert J. Brunswig, Defendants.

The above named defendants, John A. Knott, H. R. Oglesby and Frank A. Wightman, Railroad and Warehouse Commissioners, and Elliott W. Major, Attorney General of the State of Missouri, conceiving themselves aggrieved by the decree rendered as of the 8th day of March A. D. 1909, but signed, filed and entered on the 22nd day of March, A. D. 1909, as amended by the decree entered on the 17th day of April, A. D. 1909, in the above entitled cause do hereby appeal from said decree to the Supreme Court of the United States for the reasons specified in the assignment of errors which is filed herewith, and pray that this appeal may be allowed and that a transcript of the record, proceedings and papers upon which said decree was made, duly authenticated, may be sent to the Supreme Court of the United States.

And said defendants further show to the court that they have, in writing, notified the other defendants in said cause, except Thomas P. Gordon, who has departed this life, towit, Joseph M. Patterson, Charles E. Moss and George J. Dodd, and Hugh C. Gilbert, Edward L. Martin and Edward E. Axline as successors respectively to said Joseph M. Patterson, Charles E. Moss and George J. Dodd in the offices of Judges of the County Court of said Jackson County; Arthur C. Warner, and Overton H. Gentry, Jr., as successor to said Arthur C. Warner in the office of Treasurer of said Jackson County; Wyeth Hardware and Manufacturing Company, Jones-Payne Hat Company, and Albert J. Brunswig, of their intention to present this petition for an appeal, and have, in writing, invited said other defendants to join with them in such petition for an appeal, and that all of said other defendants have, in writing, accepted service of said notices and invitations, and have, also in writing, severally declined to join in said petition for an appeal, which said notices and invita-

tions, acceptances, declinations and proof of the death of said Thomas P. Gordon are now presented to the court and filed herewith.

ELLIOTT W. MAJOR,
Attorney General;
JOHN M. ATKINSON,
Assistant Attorney General;
SANFORD B. LADD,
Counsel for John A. Knott, H. R. Oglesby and Frank A. Wightman, Railroad and Warehouse Commissioners, and Elliott W. Major, Attorney General of the State of Missouri.

Dated this 6th day of March, A. D. 1911.

The foregoing petition for appeal is allowed. Dated March 6th, 1911.

(Signed) SMITH McPHERSON, *Judge.*

298 Afterwards, to-wit, on the 6th day of March, 1911, a Bond for Appeal was approved and filed. Said Bond is in words and figures as follows, to-wit:—

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 3001.

THE ST. JOSEPH AND GRAND ISLAND RAILWAY COMPANY,
Complainant,
vs.
JOHN A. KNOTT, H. R. OGLESBY and FRANK A. WIGHTMAN, Railroad and Warehouse Commissioners; Elliott W. Major, Attorney General of the State of Missouri; Joseph M. Patterson, Charles E. Moss and George J. Dodd, Judges of the County Court of Jackson County, Missouri; Arthur C. Warner, Treasurer of Jackson County, Missouri; Wyeth Hardware and Manufacturing Company, a Corporation, and Jones-Payne Hat Company, a Corporation, and Thomas P. Gordon and Albert J. Brunswig, Defendants.

Know all men by these presents: That we, John A. Knott, H. R. Oglesby, Frank A. Wightman and Elliott W. Major, as principals, and J. W. Perry and W. H. Seeger, as sureties, are held and firmly bound unto The St. Joseph and Grand Island Railway Company, in the sum of One Thousand Dollars ($1000) to be paid unto the said The St. Joseph and Grand Island Railway Company, its successors or assigns; to which said payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 6th day of March, A. D. 1911.

This obligation is upon this condition:

Whereas, the above named John A. Knott, H. R. Oglesby,
299 — to the Supreme Court of the United States to reverse the decree rendered, and entered in the above entitled cause by the Circuit Court of the United States for the Western Division of the Western District of Missouri;

Now if the above named John A. Knott, H. R. Oglesby, Frank A. Wightman and Elliott W. Major, shall prosecute their said appeal to effect, and answer all costs if they shall fail to make good their plea, then this obligation to be void, otherwise to remain in full force and virtue.

JOHN A. KNOTT.	[SEAL.]
H. R. OGLESBY.	[SEAL.]
FRANK A. WIGHTMAN.	[SEAL.]
J. W. PERRY.	[SEAL.]
W. H. SEEGER.	[SEAL.]
ELLIOTT W. MAJOR.	[SEAL.]

The above bond is hereby approved and ordered to be filed and made a part of the record.

(Signed) SMITH McPHERSON, *Judge.*

300 Afterwards, to-wit, on the 6th day of March, 1911, the following Order Allowing Appeal to defendants was filed and entered of record:

301 In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 3001.

THE ST. JOSEPH AND GRAND ISLAND RAILWAY COMPANY, Complainant,

v.

JOHN A. KNOTT, H. R. OGLESBY and FRANK A. WIGHTMAN, Railroad and Warehouse Commissioners; Elliott W. Major, Attorney General of the State of Missouri; Joseph M. Patterson, Charles E. Moss and George J. Dodd, Judges of the County Court of Jackson County, Missouri; Arthur C. Warner, Treasurer of Jackson County, Missouri; Wyeth Hardware and Manufacturing Company, a Corporation, and Jones-Payne Hat Company, a Corporation, and Thomas P. Gordon and Albert J. Brunswig, Defendants.

Now at this day come the defendants, John A. Knott, H. R. Oglesby and Frank A. Wightman, Railroad and Warehouse Commissioners, and Elliott W. Major, Attorney General of the State of Missouri, and present their petition for an appeal to the Supreme Court of the United States from the final decree rendered herein, and also present an assignment of errors accompanying said petition,

and at the same time make it appear to the satisfaction of the court that they have, in writing, notified the other defendants in this cause, except Thomas P. Gordon, who has departed this life, that is to say: Joseph M. Patterson, Charles E. Moss and George J. Dodd and Hugh C. Gilbert, Edward L. Martin and Edward E. Axline, as successors respectively to said Joseph M. Patterson, Charles E. Moss and George J. Dodd, in the offices of Judges of the County Court of said Jackson County; Arthur C. Warner, and Overton H. Gentry, Jr., as successor to said Arthur C. Warner, in the office of Treasurer of said Jackson County; Wyeth Hardware and Manufacturing Company, Jones-Payne Hat Company and Albert J. Brunswig, of their (the said petitioners') intention to present said petition for an appeal, and have, also in writing, invited said other defendants to join with them, the said petitioners, in said petition for an appeal, and that all of said other defendants have, in writing, accepted service of said notices and invitations, and have, also in writing, severally declined to join in said petition for an appeal, which said notices, invitations, acceptances, declinations and proof of the death of said Thomas P. Gordon are now, by said petitioners, presented to the court; and it is thereupon ordered by the court that said petition for an appeal, said assignment of errors, said written notices, invitations, acceptances, declinations and proof of death be filed and made a part of the record in this cause, and it is further ordered that the interests of the defendants so presenting said petition for an appeal be severed in said appeal from the interests of the said other defendants herein, and upon consideration of said petition, the court now allows the same, and to the said defendants, John A. Knott, H. R. Oglesby, Frank A. Wightman and Elliott W. Major, an appeal to the Supreme Court of the United States from the final decree rendered in this cause in accordance with the prayer of said petition. And at the same time the said defendants present their bond for an appeal in the sum of One Thousand Dollars ($1,000) with J. W. Perry and W. H. Seeger as sureties thereon, which said bond is now approved by the court, and it is ordered that a certified transcript of the record, testimony, exhibits, stipulations and all proceedings herein be transmitted to the said Supreme Court of the United States.

Dated Kansas City, Missouri, March 6, 1911.

(Signed) SMITH McPHERSON, *Judge.*

302 Afterwards, to-wit, on the 6th day of March, 1911, an assignment of errors was filed. Said assignment of errors is in words and figures as follows, to-wit:—

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 3001.

ST. JOSEPH & GRAND ISLAND RAILWAY COMPANY, Complainant,
vs.
JOHN A. KNOTT, H. R. OGLESBY and FRANK A. WIGHTMAN, Railroad Commissioners, et al., Defendants.

Assignment of Errors.

Now comes complainant and respectfully shows that the court in the proceedings and decree in the above entitled cause committed manifest error in each of the following respects:

1. In rendering and entering that portion of paragraph 5 of the original and amended decree reading:

"It is further ordered, adjudged and decreed that the defendants, or any of them, when the circumstances have changed so that the rates fixed as aforesaid shall yield to complainant reasonable compensation for the services aforesaid, may apply to this court by supplemental bill or otherwise, as defendants or either of them may be advised, for further orders in their behalf."

2. In rendering and entering paragraph 6 of the amended final decree reading:

"The taxable costs of the case including those covered by orders of the court, heretofore made or hereafter made on motion to tax or retax, and including printing bill of Buxton-Skinner
303 Stationery Company shall be paid as follows, to-wit: The one-half by complainant and the other half by defendants who are Railroad Commissioners and the Attorney General, to be recovered by execution to be issued by the clerk of this court upon application of any party in interest."

3. In not decreeing to be regulation of commerce among the states and invalid, of no force, and contrary to the provisions of section 8, article 1 of the Constitution of the United States, each of the acts of the legislature of Missouri mentioned in paragraph 2 of the amended final decree; the purpose of this assignment being to make it a separate assignment of error as to each of said acts, the same as if it were separately written out and applied to each act.

4. In not decreeing that the rights, privileges and immunities of complainant were abridged, that complainant was denied the equal protection of the law and deprived of its property without due process of law, all contrary to the provisions of the fourteenth amendment to the Constitution of the United States, by the state making and enforcing each of the legislative acts mentioned in paragraph 2 of the amended final decree; the purpose and intent hereof being to separately assign this error as to each one of said acts the same as if so separately written.

5. In holding that neither the freight act approved March 19, 1907, nor that approved April 14, 1905, nor that approved April 15, 1905, nor the passenger act approved February 27, 1907, nor the enforcement of either of them, directly affected interstate commerce.

6. In holding that neither the freight act approved March 19, 1907, nor that approved April 14, 1905, nor that approved April 15, 1905, nor the passenger act approved February 27, 1907, was discriminatory against complainant, or, as to it, violative of the fourteenth amendment to the Constitution of the United States
304 when the act was upon its face general in its terms, applicable to all companies in the state, and the findings show that it is confiscatory as to each of the other companies in the state and as to complainant's competitors.

7. In holding that the passenger act approved February 27, 1907, was upon its face valid, whereas it was discriminatory and unreasonably classified companies according to mileage and according to ownership, control and occupation so that all roads in the state were arbitrarily required to charge two cents per mile, except those of less than forty-five miles in length, which were permitted to charge four cents per mile, provided they were not owned, leased, controlled or occupied by any trunk line, company or corporation.

8. In holding that the passenger act approved February 27, 1907, was on its face valid, when it was discriminatory and unreasonable, and classified the fares to be charged by providing half fare for children.

9. In holding to be valid upon its face the freight act approved April 15, 1905, whereas it was discriminatory and unreasonable, in that it fixed rates to be charged by any individual or railway company owning, operating, managing and leasing a railroad, but applied the penalties only to railway companies or corporations.

10. In not decreeing to be void each of the acts of the legislature of Missouri mentioned in paragraph 2 of the amended final decree, for that the penalties were so enormous, unreasonable and severe as to be an attempt to coerce complainant to put them in and prevent it from having a judicial inquiry and review; all contrary to the fourteenth amendment to the Constitution of the United States; the purpose being to make this a separate assignment as to each of said acts the same as if they were separately written out and applied thereto.

305 For all of which reasons the decree and holding of the Circuit Court in such regard should be reversed.

FRANK HAGERMAN,
Solicitor for Complainant.

306 And on the 6th day of March, 1911, a petition for cross appeal was filed. Said petition for cross appeal is in words and figures as follows, to-wit:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 3001.

ST. JOSEPH & GRAND ISLAND RAILWAY COMPANY, Complainant,
vs.
JOHN A. KNOTT, H. R. OGLESBY, and FRANK A. WIGHTMAN, Railroad Commissioners, et al., Defendants.

The above named complainant, conceiving itself aggrieved by the decree rendered and entered on March 22, 1909, as of March 8, 1909, as amended by the decree rendered and entered on April 17, 1909, at the November, 1908, term of court in the above entitled cause, does hereby apply for an appeal, and does appeal from such decree to the Supreme Court of the United States for the reasons specified in the assignment of errors filed herewith, and prays that this appeal may be allowed as a cross-appeal, and such steps taken to perfect the same as may be required by law, an appeal having already been prosecuted for the decree, and a transcript taken by the attorney general and railroad and warehouse commissioners, defendants in the cause.

FRANK HAGERMAN,
Solicitor for Complainant.

The foregoing petition for appeal is presented and allowed this March 6, 1911, by the undersigned Judge who rendered the decree appealed from.

(Signed) SMITH McPHERSON, *Judge.*

307 Afterwards, to-wit, on the 6th day of March, 1911, a bond for cross appeal was approved and filed. Said bond is in words and figures as follows, to-wit:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 3001.

ST. JOSEPH & GRAND ISLAND RAILWAY COMPANY, Complainant,
vs.
JOHN A. KNOTT, H. R. OGLESBY, and FRANK A. WIGHTMAN, Railroad Commissioners, et al., Defendants.

Bond.

Know all men by these presents that the St. Joseph & Grand Island Railway Company, as principal, and E. E. Ball, as surety, are held and firmly bound unto the above named defendants in the full and just sum of two hundred and fifty dollars to be paid

to said defendants, their heirs, executors, administrators or assigns, for which payment well and truly to be made, we bind ourselves, our successors, heirs, executors and administrators jointly and severally by these presents.

Dated this March 6, 1911.

Whereas lately at the November, 1908, term of the above named court, in the above entitled cause, a decree was rendered against said complainant, which has obtained a cross appeal to reverse the action of the court in the aforesaid suit and a citation directed to the
308 said defendants citing and admonishing them to be and appear in the Supreme Court of the United States at the city of Washington, District of Columbia, thirty days from and after the date of the said citation.

Now, the condition of the above obligation is such that if the said cross appellant and complainant above named shall prosecute said cross appeal to effect, and answer all damages and costs if it fail to make good its appeal, then the above obligation to be void; otherwise to remain in full force and virtue.

ST. JOSEPH & GRAND ISLAND RAILWAY CO., *Principal.*
By FRANK HAGERMAN,
Agent and Attorney.
E. E. BALL, *Surety.*

The above bond is hereby approved and ordered to be filed and made a part of the record this March 6, 1911.

(Signed) SMITH McPHERSON, *Judge.*

309 And on the 6th day of March, 1911, the following order allowing cross appeal was filed and entered of record, to-wit:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 3001.

ST. JOSEPH & GRAND ISLAND RAILWAY COMPANY, Complainant,
vs.
JOHN A. KNOTT, H. R. OGLESBY, and FRANK A. WIGHTMAN, Railroad Commissioners, et al., Defendants.

Order.

This cause coming on for hearing this March 6, 1911, upon the application for an appeal by the complainant, together with its assignment of errors, an appeal is hereby allowed and bond for appeal is hereby fixed in the sum of two hundred and fifty dollars.

Inasmuch as this is a cross appeal, the clerk is directed to forward a transcript of all proceedings in the cause since the prepara-

tion and filing of a transcript of the record in the appeal taken by the defendants.

(Signed) SMITH McPHERSON, *Judge.*

310 Afterwards, to wit, on the 31st day of March, 1911, the following Order was filed and entered of record:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

#3001.

THE ST. JOSEPH AND GRAND ISLAND RAILWAY COMPANY, Complainant,
vs.
JOHN A. KNOTT et al., Defendants.

For good cause shown, that is, because the Clerk of said Circuit Court is unable to prepare a transcript of the record herein within thirty days from the date of the day of signing the citation herein it is

Ordered that the time for filing said record with the Clerk of the Supreme Court be, and the same is hereby, enlarged; and it is

Ordered that said record may be filed with the Clerk of the Supreme Court on or before the first day of August, 1911.

(Signed) SMITH McPHERSON, *Judge.*

Dated Kansas City, Mo., March 31, 1911.

311 Afterwards, to-wit, on the 13th day of April, 1911, a Stipulation was filed. Said Stipulation is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 3001.

THE ST. JOSEPH & GRAND ISLAND RAILWAY CO., Complainant,
vs.
JOHN A. KNOTT et al., Defendants.

Whereas, John A. Knott, H. R. Oglesby and Frank A. Wightman, Railroad and Warehouse Commissioners, and Elliott W. Major, Attorney General of the State of Missouri, defendants in the above entitled cause, have been allowed an appeal therein to the Supreme Court of the United States.

And, Whereas, the said The St. Joseph & Grand Island Railway Co., complainant, has been allowed a cross-appeal herein to the Supreme Court of the United States.

And, Whereas, the said Railroad and Warehouse Commissioners and said Attorney General were, by said circuit court, allowed an appeal, and the Chicago, Burlington and Quincy Railroad Company was allowed a cross-appeal to the Supreme Court of the United States from a decree rendered by said circuit court in a cause then pending in said Circuit Court of the United States, wherein said Chicago, Burlington and Quincy Railroad Company was complainant, and said Railroad and Warehouse Commissioners and said Attorney General and others were defendants.

And, Whereas, the evidence offered, taken and received in the said circuit court in the above entitled cause is included in the transcript and printed record in said cause wherein the said Chicago, Burlington and Quincy Railroad Company was complainant.

And, Whereas, all of said evidence was for the purpose of the hearing in said Supreme Court of the United States of the
312 said appeal and cross-appeal in said cause wherein the said Chicago, Burlington and Quincy Railroad Company was complainant, printed, under the direction of the clerk of the Supreme Court of the United States and is contained in five printed volumes now on file in the office of the clerk of said Supreme Court in the causes therein pending, numbered 21821, wherein John A. Knott and others are appellants and the Chicago, Burlington and Quincy Railroad Company is appellee, and numbered 21837, wherein the Chicago, Burlington and Quincy Railroad Company is appellant and John A. Knott and others are appellees.

Now, Therefore, in order to save the parties hereto the useless expense which would be incurred in the preparation of a complete transcript of the record and the evidence in the above entitled cause, it is stipulated and agreed between the parties hereto that upon the hearing in the said Supreme Court of the appeal and the cross-appeal in the above entitled cause, the evidence contained in said five printed volumes shall be taken and regarded as the evidence in the above entitled cause with the same effect as if it had been written out and certified in this cause by the clerk of the circuit court, and that the evidence contained in said five printed volumes, supplemented by a transcript of all the pleadings, papers, decrees and orders peculiar to the above entitled cause, shall be taken and regarded in said Supreme Court as a complete transcript of the record and proceedings in the above entitled cause, and that it shall not be necessary for the clerk of the circuit court to include in the transcript prepared by said clerk any evidence contained in said five printed volumes.

ELLIOTT W. MAJOR,
Attorney General;
Solicitors for John A. Knott et al., Appellants.
FRANK HAGERMAN,
Solicitor for St. J. & G. I. Ry. Co., Appellee.
FRANK HAGERMAN,
Solicitor for St. J. & G. I. Ry. Co., Cross-Appellant.
ELLIOTT W. MAJOR,
Attorney General;
Solicitors for John A. Knott et al., Cross-Appellees.

313 The Opinion filed herein on the 14th day of June, 1907, is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 3000.

THE WABASH RAILWAY COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendants.

And Seventeen Other Like Cases.

Remarks of Judge Smith McPherson, at Two O'clock p. m., June 14th, 1907.

Here are 18 cases, in which all the railways of the State ask to file supplemental bills in equity in the 18 cases, brought two years ago against the State officers to enjoin the enforcement of statutes of 1905 fixing rates. The charge was made that the rates were not remunerative but confiscatory, and therefore void by reason of the United States Constitution. Those cases were placed at issue and referred to a master. The evidence has been taken, and the court is now advised that within a month or two the cases will be argued to the Master. So that after six months or more from now a final decree will be entered in this court. I do not speak of this delay in a spirit of complaint, or even criticism. I simply state the fact of delay. During the early part of this year the legislature of Missouri repealed part of the rate laws of 1905 complained of, enacted substitutes therefor and placed still other commodities under specific tariff rates, including passenger rates of two cents per mile.

Early in this week notices were given of an application to file supplementary bills, attacking the rates fixed in 1907, on the ground that such rates were confiscatory.

That this is a judicial question all informed people agree. That it is a question of gravity and almost supreme importance all recognize and by none more than by courts. It involves the question of what are reasonable rates and how determined. It involves the question of whether all the receipts for State business can be taken in their entirety, and if in the aggregate remunerative of whether the laws are valid. And it involves the question as to whether
314 every person is entitled to have his product carried at reasonable rates instead — carrying some at unreasonably low rates and others at unreasonably high rates, and allowing the law to stand because the average is remunerative. And it involves the question of whether the State of Missouri is attempting to exercise the powers solely lodged in the Congress of the United States. And there may or may not be involved the question of which is the more powerful with reference to these rates, the nation or the state.

I express no opinion as to some of these questions, on some of which I have a conviction and on others I do not even have a tentative opinion. But they are all judicial questions, and for the courts only, and in the end will be decided by the Supreme Court of the United States, a court in which every patriotic person has unbounded confidence. To that court these questions in the end will go for decision.

As to whether these supplemental bills may be filed was set down for argument this morning at the opening of court. These rate statutes presumptively are valid, and if valid went into effect at midnight last night. Seeing the gravity of the situation, this court on yesterday, on its own motion, on inspecting the proposed supplemental bills, entered a restraining order, restraining the railways from carrying out the recent statute until the matters could be heard, as to filing the supplemental bills on which, if filed, a temporary injunction should issue. At the morning hour of this day, the Assistant Attorney General of the State appeared and stated that the Attorney General could not be here until tomorrow morning. It was also at that time made to appear that on the morning of this day suits were filed in the state courts at St. Louis and Kansas City, and a temporary mandatory injunction had been issued by the state courts, commanding the railways to recognize as valid and carry out the statute of 1907.

All courts, state and federal, recognize the delicacy of real or seeming conflicts between the courts. All courts recognize that all other courts act in good faith. And this court appreciates the
315 situation. It is a question worthy of argument and deliberation.

When the foregoing situation was disclosed this morning counsel for the railways moved for a continuance for a week or ten days, to the end that the situation might be looked into. This motion will be overruled, and all these matters are set down for hearing at two o'clock to-morrow afternoon. These delays cannot be allowed. The interests of the public and the railways alike demand the speedy determination of all questions connected with the foregoing statements as well as all questions connected with the validity or invalidity of the rate statute recently enacted by the state legislature of Missouri. At the time named I shall expect counsel on both sides to be ready to proceed in argument, as well as to move for such other proceedings as may be deemed proper. All of which is so ordered.

316 On the 17th day of June, 1907, an Opinion was filed. Said Opinion is in words and figures as follows:

In the Circuit Court of the United States, Western District of Missouri, at Kansas City.

THE WABASH RAILWAY COMPANY
vs.
HERBERT S. HADLEY, Attorney General, and THE STATE RAILROAD COMMISSIONERS.

And Seventeen Other Like Cases.

Remarks of Judge Smith McPherson, Monday June 17, 1907.

These cases were argued on Saturday and taken under advisement until this time. The situation is such that I must decide the questions to day. Limited as the time has been, I have an abiding conviction of what should be done even if the reasons therefor may not be stated with the fullness that the importance of the matters requires. I have been much aided by the arguments, which were strong, eloquent and powerful, by counsel representing both sides, and as it seems to me, every phase of the questions was so illuminated by the arguments that all possible questions are at an end of debate.

The real question here is, has this court jurisdiction over the passenger fare law of 1907 of the Missouri Legislature by which it is declared that the legal fare be two cents per mile. A question connected with that is, whether the bills tendered are supplemental bills to those filed in the eighteen cases two years ago to enjoin the enforcement of the freight tariff law of 1905 now pending before the Master.

A supplemental bill usually is where there has been some change in the rights or status of the parties which must be carried forward by a supplemental bill. And usually when a supplemental bill is thus allowed, matters can be brought in which could have been covered by an amendment to the original bill. These discussions as to supplemental bills, as well as to other bills, are exceedingly technical. It seems to me that the test is not so much in the
317 way a pleading is styled, as what the allegations of the pleadings are. Formerly, discussions as to various bills in equity gave rise to great delay, the results being that years and years would elapse before a chancery case could be concluded. Looking back at those old discussions, it now seems to have been a folly to thus waste the time and energies of the judges and of counsel in determining these technical questions. Such must have been the belief of the Supreme Court when a code of Rules in Equity were established, the purpose no doubt being to get rid of the old technicalities which served no useful purpose. By the adoption of the Rules in Equity, we have a system of fact pleading, covering almost every phase of equity pleading and practice; and it is only when some question of practice is not covered by the rules, that we go back to see what the practice of the High Court of Chancery in England was, and then

not as positive rules, but as furnishing just analogies. Rule 90 thus providing was adopted in the year 1842, and the Supreme Court has decided that when we go to the English Chancery practice, we must take the practice as it existed in England in 1842, when this rule was adopted. By Rule 57 it will be seen that the supplemental bill is allowed when any material event has happened after the filing of the original bill. In 1905 the Legislature of Missouri enacted a maximum freight tariff statute as to several commodities. The railways contested the validity of that statute in the eighteen actions above referred to, and these actions are still pending. By the act of 1907 the Legislature declared that all railways should charge but two cents per mile per passenger. It seems to me that this is an event happening since the institution of the original suits, and an event that is germane to the original controverted questions.

But I do not deem it of much importance to determine whether the pleadings tendered for filing are supplemental bills, or whether they are original bills.

On Tuesday, the 11th inst., the complainants gave notice of filing these bills on Friday, the 14th inst. On Thursday, the
318 13th inst., the railway companies asked leave to file them. Solely out of courtesy to the Attorney General, who was not then present, this was refused, but the Court on its own motion issued restraining orders to keep the matters in status quo. At the time fixed, Friday the 14th inst., the matter was again delayed for a day at the request of the Attorney General, he still being absent. And on that day bills were filed in the state courts at Saint Louis and Kansas City, the purpose being, as it is said, to bring about the enforcement of this statute in question. And the argument now is, that as these cases were filed in the state courts on Friday the 14th inst., the day before the arguments were had in this court, that the same subject matter was pending in the state courts, and that the state courts would take jurisdiction to the exclusion of this court, the cases being there first pending. But the above statement of facts shows that the cases were pending in this court from Tuesday the 11th inst. and that orders were made on Thursday the 13th inst., the day before the cases were lodged in the state courts. If these matters could not be covered by supplemental, they could be covered by original bills, and they were presented prior to the institution of the cases in the state courts. It is not material whether these supplemental bills so-called are full and complete as original bills. Defects could be cured upon exceptions or demurrers, or by complainants on their own motion before the filing of an answer. Nor is it material whether these pleadings are filed in the original cases or separtely docketed; because if separately docketed, they will at once for trial purposes be consolidated with the old cases pursuant to Section 921 of the Revised Statutes. And whether the contention of counsel for the state officers be technically correct or not, the contention is without substantial merit as to the rights of the parties. These pleadings should be filed and regarded as having been filed on Tuesday, the 11th inst.

The fixing of rates by the Legislature is presumptively correct and

the Railway Companies have the burden of proof of showing that the statute is not remunerative. That the fixing of rates is a legislative act, all agree. But that such rates must be reasonably remunerative, cannot longer be discussed. The railways are entitled to cost and a reasonable profit, and no fair-minded man dis-
319 putes it. How to arrive at the cost and a reasonable profit, is a most difficult problem. But if the statute is challenged, it must be ascertained, and this ascertainment can only be by judicial proceedings, and must be determined by the courts, and ultimately by the Supreme Court of the United States. No skill of the draughtsmen by the use of words or phrasing can take this question from the courts. It can never be settled in a criminal case by arresting ticket agents and conductors. The Supreme Court in the end must have the evidence with the right to make the ultimate findings of fact. There is but one orderly and seemly way, and that is in equity with the right of appeal to the Supreme Court, as has been said by that court over and over again. All contentions that the courts of the state can decide these questions as well as can the United States courts, is not a question for argument because it is a question of jurisdiction, and in my judgment, in these cases this court has jurisdiction, and having jurisdiction, the jurisdiction should be exercised.

There seems to be much feeling in the minds of many as to where these cases should be adjudicated, but why the feeling I do not understand. And yet I recall the historical facts that at various times since the organization of this government, the feeling has run high as to whether the federal or state courts should adjudicate matters of importance to the public. No one doubts that the states have a right to manage their own local affairs, and to have matters growing out of their own local affairs determined by their own courts. But it is too late to seriously complain because the United States Courts take and exercise jurisdiction under the constitutional provision providing for the courts, and the enactments thereunder. The United States Courts, regardless of the citizenship of the parties, will take and exercise jurisdiction in actions of a civil nature when the provisions of the United States Constitution are invoked, as has been done in this case. The Constitution provides for this, and Congress has provided the procedure. The Commerce Clause of the United States Constitution has been invoked, as is the Fourteenth Amendment. These are national questions, and the Supreme Court will hold the scales of justice with the evidence before it, and why there should be any excitement or feeling about this, is beyond my compre-
hension. I do not know, and of course do not state, that the
320 State Legislature has wronged these railways, because that is the question to be decided when deciding the merits of the case. The railways say that they are being wronged, and they should have a hearing, and the hearing should be on the evidence, and that evidence carried in the record to the Supreme Court. And if upon the evidence the railways are being compelled to transact business at a loss, no one ought to doubt but that the Supreme Court will hold the statute void. If the rates fixed are remunerative, no

one ought to doubt but that the statute will be upheld. It is too late to talk about the alleged wrongs of the Supreme Court declaring statutes void. That question was fought out one hundred years ago, and from the organization of the Supreme Court down to the year 1888, being the period covering the first one hundred years of the United States Supreme Court, that court held twenty United States Statutes void. During the same period that court held one hundred and eighty-one state statutes void, of which fourteen were Missouri statutes. (See Appendix to Volume 131 U. S. Reports.) How many statutes have since been declared void by that court, I have not taken the time to ascertain. Some of the statutes thus declared void were railway rate statutes enacted by the states.

These questions are of the greatest importance. There are many complications arising. Much is to be considered besides the mere rates or fares. There must be equality of rates, the treatment and charging of all alike. No rebates; no discriminations must be allowed. Safety of the public, including passengers and employés, must be considered. And as of much importance as any other question, if not the greatest of all, is the question of efficient service. Rapid and prompt delivery of freight must be had. Fast passenger trains with but few stops, for passengers going a considerable distance, are demanded. Local trains for local passengers, are required. To have such efficient service, reasonable compensation must be paid. All these questions are involved in the fixing of rates. Between the cities of Saint Louis and Saint Joseph, one line of railway is wholly within the state, while another and competing line a part of
321 the distance is within the state of Kansas. A like situation exists between Kansas City and Saint Joseph, and another like situation exists between Kansas City and Joplin. Possibly there are other like situations. In the case of Hanley vs. R. R., 187 U. S., the Supreme Court decided that a railway connecting two points within the state, and doing business between the two points, but with a line outside of the state a part of the distance, was engaged in interstate commerce controllable only by enactments of Congress. What about the Missouri statute fixing rates over the one line wholly within the state as against a competing line a part of the distance outside of the state? I do not intimate the conclusion, but that there is a question, can not be doubted. And if the statute is void in part, is it separable, leaving the valid parts to stand with the void parts eliminated? I simply mention these questions to show the gravity and importance of these cases without in the slightest degree intimating the conclusion, often discussed by men of great ability, but upon which as yet there has been no conclusion reached, so far as I know, by any of the courts.

It is urged with much plausibility that by reason of the case of Fitts vs. McGhee, 172 U. S., that because penalties are affixed to the Statute of 1907, that the criminal courts of the state only can take jurisdiction. I do not stop to review the various Missouri Statutes upon the subject of both passengers and freight, all of which must be considered as in pari materia; but it is sufficient to say that the inflicting of penalties is not the only remedy. The Attorney Gen-

eral and Railroad Commissioners still have much to do with the enforcement of these statutes which the railways contend are void in part. These matters were considered, and a conclusion reached adversely to the contention of the officers of Missouri, by the Supreme Court of the United States, sustaining Judge Philips when presiding in this court, and reversing the Supreme Court of Missouri. R. R. vs. Missouri R. R. Commissioners, 183 U. S. 53. As I understand in the original eighteen cases now pending in this court, the question was and is, whether all the earnings in the aggregate are remunerative. That theory being, I suppose, by reason of the case of Smythe vs. Ames, decided by the Supreme Court, and the question is still present under the General Statutes of Missouri, the Statutes of 1905, and the Statute of 1907 in question. The time is not far dis-
322 tant when the question will be raised, and possibly in these very cases, as to whether the statutes can stand, if some rates are too high, if the rates within the state in the aggregate are remunerative. The question will arise whether one person can have less than reasonable rates, and another be compelled to pay more than reasonable rates. Will it be a sufficient answer to say that in the aggregate the rates are remunerative? Or is that a question only between the individual and the railway company? Upon this question I intimate no ruling, but the importance of the question can not be overestimated.

These cases will be set down for hearing. The orders heretofore made will stand except as now modified. The two cent passenger fare statute should be put in force, and kept in force for some months with the rights of the railways later on to renew their motions to enjoin the enforcement of the statute. One class of people claim that with the two cent fare travel will so increase as to make it remunerative. Others deny this. The Wisconsin Commission but lately declared, after months of investigation, that in that state a two cent passenger fare would be confiscatory. Governor Hughes, by a recent veto message, so declared as against an enactment providing for the two cent fare in the populous state of New York. It may be that what will be reasonable rates in parts of Missouri on one line, will be unreasonable in another part of Missouri on another line. How can these questions be determined? Is it not at present all speculation and guesswork? Of what value will be the testimony of an ordinary business man testifying by way of opinion? And of what value will be the testimony of railway experts giving opinion and illustrating his opinions by the use of many figures? Experience over a reasonable period of time ought to, and no doubt will, settle these questions, at least for the time being, although what may be a reasonable remuneration one year, may be unremunerative five years hence. The Supreme Court of the United States in Smythe vs. Ames, referred to, took care of that question by keeping it open with the right to open up the case from time to time as circumstances required.

Therefore the orders will be that this court retains jurisdiction of these cases regardless of whether the pleadings tendered are
323 considered as supplemental bills or original bills, and no order will be made for some months with reference to the two cent

fare statute, leaving it for the time being operative and as though in full force.

324 On the 17th day of June, 1907, an Opinion was filed. Said Opinion is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

THE WABASH RAILWAY COMPANY
vs.
HERBERT S. HADLEY, Attorney General, and Other State Officers.

And Seventeen Other Like Cases.

Remarks of Judge Smith McPherson, June 17th, 1907.

The real question here is, has this court jurisdictioin over the passenger fare law of 1907 of the Missouri legislature declaring it unlawful to charge more than two cents per mile? A lesser question is whether the bills tendered for filing are supplemental bills to those filed in this court in the eighteen cases two years ago and now pending before Mr. Schofield, the Master.

I fully appreciate the responsibility resting upon me and the consequences to follow from the orders now to be made. If mistaken the mistakes are mine, even though I have had but part of one day since the argument to reach these conclusions. Never has a case before me been argued with greater eloquence, logic and power than was done by counsel both for the state officers and for the eighteen railways. Every phase of the case direct and collateral has been so illuminated that all possible questions are at the end of debate. What is the supplemental bill in equity? And wherein is the importance of defining it? Usually it is where there has been some change in the rights of the parties, which must be carried forward by a supplemental bill. One hundred and more years ago judges who had but little to do except play the role of mental acrobats and seek to refine and distinguish and to display an affected learning, and to discuss most gravely "the difference betwixt the west and northwest side of a hair" most elaborately set forth their views, as to original bills and
325 amended bills and supplemental bills, and bills of review, and bills in the nature of bills of review. The result was that a chancery case lasted for many years. More than fifty years ago the Supreme Court recognized the folly of much of this, and by a code of rules adopted the system of fact pleading and left the old chancery practice in force only when the 94 rules adopted did not meet the situation that might arise, and by rule 57 defined a supplemental bill. But that is not important in my judgment. Whether this proceeding should be by original bill, or by supplemental bill is of small consequence. If by original bill, the railways had the right to file the same without notice, and the right to a restraining order without

notice. If by supplemental bill the usual practice is to require notice. And in either case it is discretionary with the judge to allow a restraining order without notice until a hearing can be had on notice as to a temporary injunction. On Tuesday the 11th instant, the complainants gave notice of filing these bills on Friday the 14th instant. On Thursday they asked to file them. Solely out of courtesy to the Attorney General, who was not present, this was refused; but the court on its own motion issued the restraining order, to keep the matter in statu quo. At the time fixed for the hearing the matter was again delayed for a day at the request of the Attorney General, he unavoidably being absent. During that delay the bills were filed in the State courts. For this there is no criticism. But I have stated the facts, and the statement of facts shows that these cases, as to the laws of 1907, were pending and had been pending since Tuesday the 11th instant. And these bills must be considered as filed as of that date. And whether defective as original bills is not material, because such defects can be corrected on demurrer or exceptions, or by the complainant before answer as of course. Nor is it material whether filed in the original cases or separately docketed. If separately docketed, they will at once for trial purposes be consolidated with the old cases, pursuant to Section 921 of the Revised Statutes. If the contention of counsel for the state officers be technically correct, it is without substantial merit as to the rights of the parties.

326 That the fixing of rates by the legislature is presumptively correct, all concede. That it is a legislative act, all agree. But that such rates must be reasonably remunerative, cannot longer be discussed. The railways are entitled to cost and a reasonable profit, and no fair minded man disputes it. How to arrive at the cost and reasonable profit is a most difficult problem. But it must be ascertained and this ascertainment can only be by judicial proceedings, and to be determined only by the courts and ultimately by the Supreme Court of the United States. No skill of the draftsman by the use of words or phrasing can take that from the courts to the town meeting. It cannot be changed by declamation, either sophomoric or by invective. It can never be settled in a criminal case by arresting ticket agents or conductors. The Supreme Court in the end must have the evidence, with the right to make the ultimate findings of fact. No local tribunal, Federal or State, can foreclose the fact as would be done if the case goes to the Supreme Court on writ of error to the State courts, and from the State courts there is no method of review but by writ of error. There is but one orderly and seemly way, and that is in equity, with the right of appeal to the Supreme Court as has been said by that court over and over again. The argument that the courts of the State can decide as to the validity of the laws of the State as well as can the United States courts will not be argued by any Federal judge, but will be conceded. Those courts are as high minded and as learned as are the Federal courts, but that is not the question. It is a question of jurisdiction. And this court has jurisdiction and will maintain its jurisdiction. Nor is this to the prejudice of anyone. As I listened on Saturday to the argument, I was carried back to the days of 1801-9. I recalled the judicial revo-

lutions of Virginia and Pennsylvania. I recalled the case of Luther v. Borden, growing out of the Dorr rebellion. I recalled the bitterness of half a century ago between Iowa and Missouri over the
327 State line. I recalled the recent Lives of Thomas H. Benton and Gouvernor Morris by a distinguished author who states that at one time or another every one of the original thirteen states has tried in some form or other to destroy this government. And I recalled that in every instance, save the troubles of 1861-5, that the United States Courts have, in a dignified way, settled the disputes and law-abiding people acquiesced and the lawless element were compelled to submit.

That the States have the right to manage their own local affairs will ever be maintained. But it is too late to talk about states dictating to the Government, or to riding down its courts. This is a Nation. Its commerce will not be interfered with by any State, because for that almost alone we adopted our Constitution. The Commerce Clause will always be upheld, and the rights of the citizen, including corporations, will ever be protected in their just rights under the Fourteenth Amendment. These are National questions, and the Supreme Court will hold the scales of justice with the evidence before them. I do not know and of course do not state that the State legislature has wronged these railways. That is the case on its merits. But the railways say they are being wronged, and they must have a hearing, and a hearing on the evidence, and that evidence carried with the record to the Supreme Court. And if upon the evidence they are being compelled to transact business at a loss, no one need doubt but that the Supreme Court will nullify the Statute. If the rates fixed are remunerative, the statutes will be upheld. It is too late to talk about the alleged wrongs of the Supreme Court declaring statutes void. That was fought out one hundred years ago. Down to 1888 the period covering the first 100 years of the United States Supreme Court, that court held twenty United States statutes void. During the same period that court declared as void 181 state statutes, of which 14 were Missouri statutes. (See Appendix to Vol. 131 U. S. Rep.) How many have since been declared void I have not taken the time to ascertain. And some of the statutes thus declared void were railway rate statutes, enacted by the states. It must be remem-
328 bered that in passenger and freight carrying there is much to be considered besides rates or fares. Important as any, if not the most important, is the equality of rates; the treatment and charging of all alike. No rebates; no discriminations, must be allowed. Safety of the public, including passengers, and employés, must be considered. And of as much importance as any other question is efficient service. Rapid and prompt delivery of freight must be had. Fast passenger trains, with but few stops, for passengers going a considerable distance, *is* demanded. Local trains for local passengers *is* required. To have these reasonable compensation must be paid. So that these questions are all involved. And in consequence such business as is between St. Louis and St. Joseph, Kansas City and St. Joseph, Kansas City and Joplin, and perhaps other points, where parts of the routes of some of the lines are out of the state, a grave question

is presented, and no small question is covered whether parts of these statutes are void that the matter can be separated and the balance of the statute remain in force, because Congress, even as to those lines wholly within the state, may or may not have control of such commerce when it directly interfer-s with commerce passing out of and back into the state. I neither pass upon this question nor express an opinion thereon, because while such questions have frequently been discussed by the ablest of men, such questions have not yet been decided. I simply mention it as a great National question.

It is urged with much plausibility that because penalties are affixed to the statutes of 1907 that the criminal courts of the state only take jurisdiction. I do not stop to review the various Missouri statutes upon the subject of both passengers and freight, all of which must be construed as in pari materia. But it is sufficient to say that the inflicting of penalties is not the only remedy. The Attorney General and Railroad Commissioners still have much to do with the enforcement of these statutes, which the railways contend are void in part. In the original cases the question was whether all the earnings in the aggregate were remunerative. That question is still
329 present under the statutes of 1907. Whether these laws by raising the freight rates and lowering the passenger fares are remunerative in the aggregate must be considered by the court. The State is not in effect a party, because the charge is that these officers are seeking to enforce void statutes, in more ways than by inflicting penalties.

The orders heretofore made will stand until vacated or modified. The cases will be set down for hearing as to whether a temporary injunction shall issue? and if issued what shall be the scope? Shall they restrain the enforcement of the recent freight rate statute? Shall they restrain the enforcement of the recent two cent passenger rate statute? Tentatively, subject to argument, and subject to change of opinion, if I should hear the cases, my present view is that the two cent passenger fare statute should be put in force and kept in force for some months at least, with the right of the railways later on to renew their motions to enjoin the enforcement of the statute. One class of people claim that with a two cent fare travel will so increase as to make it remunerative. Others deny this. The Wisconsin Commission but lately declared after months of investigation that in that State a two cent fare would be confiscatory; and Gov. Hughes by a recent veto message so declared in the populous state of New York. How is the question to be determined? Is it not all speculation and guess work? Of what value will be the testimony of an ordinary business man? And of what value will be the testimony of railway experts?

Such are my present views, hurriedly stated and without time to place them in the shape of a formal opinion. Nor would it be of substantial benefit to anyone to review the many authorities. They are known to the profession and to the courts. But I have stated what the law is as I understand it to be.

330 On the 31st day of March 1908, an Opinion was filed. Said Opinion is in words and figures as follows:—

In the Circuit Court of the United States in the Western District of Missouri.

No. 2988.

THE SAINT LOUIS & SAN FRANCISCO RAILROAD COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General and Others, Defendants.

And Seventeen Other Like Cases, Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3004, 3005, 3006.

Frank Hagerman and others for Complainants.
Herbert S. Hadley, Attorney General;
John Kennish, Assistant Attorney General;
F. W. Lehmann and S. B. Ladd, for Defendants.

Opinion.

SMITH MCPHERSON, *Judge:*

Here are eighteen cases, brought by as many railway companies of the state, against the Attorney General, Railroad Commissioners of the State, County Judges, County Treasurer and shippers.

The purpose of the bill in each case, is to enjoin the enforcement of state railway rate statutes on the ground that the rates thus fixed by legislative enactment, are not remunerative, but are confiscatory. The original bill of complaint in each case was filed in 1905 assailing an Act approved April 15, 1905, fixing rates. In June of that year temporary injunctions were issued. In December of that year answers were filed, and on defendant's motion the cases were referred to a Special Master before whom the cases are still pending.

That statute was enacted in lieu of certain sections of the Revised Statutes of the State.

In 1907 the Legislature enacted a statute which was approved March 19, 1907. This statute after referring to the one of 1905, declared that the same

331 "be and hereby are repealed, and the following to be known as sections 1194, 1194*a*-1, 1194*b*-1, and 1194*c*-1 of said Revised Statutes, are enacted in lieu thereof."

Then follow four sections designated as above.

By still another statute passenger fares were filed at two cents per mile, theretofore three cents per mile.

In June 1907 each company filed another bill, concerning which see the opinion by this Court in this case in 155 Federal Reporter

220. Since that time the cases have been pending before the Master, the delay occasioned in part at least by an awaiting of a decision of the Supreme Court in what are known as the Minnesota and North Carolina cases. This Court declined to grant a temporary injunction as to the passenger rates, but granted such writ as to the freight rates. Both statutes of 1907 provide for penalties for a violation of the enactment, and expressly recite that any liability or penalty incurred under the statute of 1905 may still be enforced. It is now claimed that the original cases are at an end because the statute of 1905 has been repealed. The Court cannot so hold. As has been noticed for the statute when repealed, there was a substitute enacted. One rate was cut out and another fixed, with the penalties under the prior statute remaining. This does not overthrow the original cases. They are rightfully pending with part of the subject matter still in existence, and a new alleged grievance in place of the old. This new grievance, if one, should be brought forward by a supplemental bill, that being the office of such a bill.

Two shippers on each road are made defendants. That it is proper to make them parties cannot be in dobut, as they have a direct interest. Whether a decree herein will be binding on other shippers, is a question not now for decision. And that the County Judges and Prosecutors have to do with these laws is plain. But these matters are exceedingly technical. The real question as to parties, is as to making the Railroad Commissioners and Attorney General parties defendant. As to the right to make the Attorney General and the Commissioners parties defendant, is a question that has been argued for and against with much earnestness and by the citation of many authorities.

At common law the office of Attorney General was the
332 highest law office of the Crown. He represented the Crown in all legal matters and was the responsible officer as to the legal duties and prerogatives, appearing in the courts of record and the House of Lords in all matters affecting the public, to the end that justice might be done in the name of the King. The duties of that office are not less in this country, and the specific mention of many things that he must do in behalf of the public and the State are not to be regarded as exclusive in the full performance of his duties.

The Constitution and Statutes of Missouri make special mention of many things that he is required to do. He is upon a salary, and cannot receive fees. He is a member of the State Board of Equalization and of Education, as well as other Boards. He prosecutes suits on official bonds. He prosecutes railroads for refusing to grant proper rates to shippers. He must appear before the Interstate Commerce Commission when residents of the state are being wronged. He asks for, and receives, the aid of additional counsel. He sees to the enforcement of the banking laws, and proceeds against express companies and railroad companies and looks after forfeitures. These and a great many other things he is specifically required to do. And the importance and dignity of his office are such, that in most instances he is relieved from making oath to papers that he is permit-

ted or required to file. And then out of apprehension that because certain things are specifically mentioned, that the conclusion would be arrived at by construction that all other matters were excluded, Section 4943 of the Revised Statutes was adopted, requiring that officer to institute and prosecute all suits and other proceedings at law and in equity requisite or necessary to protect the rights and interests of the state and to enforce any and all rights, interests or claims of the state against any and all persons and corporations.

It would seem that from the foregoing there could be no doubt but that it is the duty of the Attorney General to enforce the statutes in question presented by these cases, if valid, not only by virtue of the duties pertaining to that office by common law, but as well by the statutes just alluded to.

333 But there is a further statute which counsel on both sides have overlooked. Chapter I of the Laws of 1907 by Section 61 thereof eliminates all doubt by appropriating twenty thousand dollars per year to be drawn by the Attorney General from time to time

"which said sum shall be expended under the direction of the attorney general in the prosecution or defense of suits heretofore brought, or that may hereafter be brought by or against any railroad company, wherein the validity of any act of the general assembly may become involved or contested."

It will be noticed that this appropriation of this large sum of money is made not only to the end that the attorney general may seek to maintain the validity of any statute brought in question by any case hereafter brought, but likewise covers cases heretofore brought. And in the light of that section appropriating forty thousand dollars for the biennial period of two years to be drawn by the Attorney General and expended under his direction, leaves no room for argument that it is the duty of the Attorney General to enforce all statutes enacted by the General Assembly and see to it to the best of his ability that no court by decree or judgment holds the state enactments void.

Without scheduling the different statutes, the duties of the Commissioners are likewise plain. They are vested with authority to fix rates, and should the statutes in question be overthrown as being void, they will at once fix some other rate in their judgment valid. The question as to making the Commissioners parties defendant has been put at rest by the case of the Commissioners vs. R. R. 183 U. S. 53.

Again, as when the cases were brought, and first argued, it is urged that the state in effect is being sued in violation of the Eleventh Amendment, and the question has again been argued with force, logic and eloquence. That a determined effort has been made by the use of words, phrasing and forms within the past two years, regardless of substance, effect and meaning, by the states to deprive the United States Courts of jurisdiction vested by the Constitution and laws enacted by Congress, is known by all. The argument is

334 to the effect that all litigation of and concerning the fairness, and validity as well, of state statutes shall be in the courts

of the state whose legislation is assailed, leaving the right and the only right of carrying questions of law to the United States Supreme Court by writ of error, but likewise insisting that in cases as to the reasonableness of rates, dependent wholly upon facts, that a writ of error be unavailing, and that the state courts of the state whose state legislation is assailed, shall alone and finally decide the case. And that this will be so in a chancery case as well as in an action at law by the only remedy, by writ of error to a State Supreme Court, when the case depends upon questions of fact, has been held by the Supreme Court in Egan vs. Hart, 165 U. S. 188. There are others who believe that all matters both of fact and law arising under the Constitution of the United States should in the end be decided by the only court created for that purpose. So it is that a sharp conflict is presented. Almost from the beginning of our government this question at short recurrent periods has arisen, but generally concluded by the Supreme Court holding that this is a National government with a National Judiciary, and that the National Constitution is and shall forever remain the supreme law of the land, anything in the laws of any state to the contrary notwithstanding. When our government was organized, every of the thirteen states was in debt, and some of them well nigh hopelessly so. In and out of both the National and State Conventions the arguments were for and against whether a state could be sued in a National Court. Hamilton and Marshall and Madison said it could not be done. Patrick Henry with his numerous doubts and opposition was filled with fear. Others like James Wilson and Edmund Randolph said the state would and ought to be suable by a citizen of another state for wrongs done. Near the end of Washington's first term, the famous suit of Chisholm vs. Georgia was decided, the holding being that Chisholm, a citizen of South Carolina could recover judgment for money that the State of Georgia justly owed him.

335 It is said that within two days from that decision, a resolution was offered in the Senate to amend the Constitution to prevent such suits, by declaring that the Judicial power shall not extend to any suit against a state by a citizen of another state. But that failed because it was urged that notwithstanding the decision in the Chisholm case, such jurisdiction had never extended nor existed. Thereupon new phrasing was adopted, and a new resolution was offered, reciting that "The Judicial power of the United States shall not be construed to extend to etc." shortly ripening into the Eleventh Amendment. The only purpose of that Amendment was to prevent a state from being sued by its creditors, and history furnishes the proofs conclusive of the correctness of the statement. Those who are doubtful of this need only read what Chief Justice Marshall said in Cohens vs. Virginia (6 Wheaton).

At common law from time immemorial, a public officer was not allowed to justify under a void law or void order, but was compelled to make restitution of the property taken or to pay damages therefor. And such has been the uniform holdings in this country, and for the reasons that a void statute or void order is utterly without effect and is wholly unavailing as a defense. Such has been and is

the law of England, and such has been and is the law of this country. And why such should not be the law on the equity side of the docket by preventative remedies against threatened wrongs, is difficult to conceive.

But the Supreme Court has held in the cases of In Re Ayres, 123 U. S. 443, and Fitts vs. McGhee, 172 U. S. 516, that in cases wherein the state as a state is affected, that a suit against the officers is in effect one against the state in contravention of the Eleventh Amendment. It is to be noted that both the cases above referred to would have been decided as they were decided, if taken to the Supreme Court by writ of error to a State Supreme Court, or by appeal from a Circuit Court, if the Eleventh Amendment had never been adopted. This is so because in the Ayres case a full, adequate and complete remedy at law existed, and in the case of Fitts vs. McGhee the
336 sole purpose was to enjoin criminal proceedings. But it is now too late to object to the jurisdiction of a Circuit Court to enjoin the enforcement of a rate statute alleged to be void because confiscatory, although concededly the holdings now are that the test is not whether the state is a party to the record by name, but is the state in effect a party?

But in the case at bar the state as a state has no interest. And the state as a state is not attempting to confiscate property. It is the government of the state, first by its legislature, and then by its officers, who according to the allegations of the railways, are attempting to confiscate property. Whether such acts will amount to confiscation if carried out, relate to the case on its merits. But the point to the whole matter is, that the state is not seeking to act, and no effort is made to enjoin the state, either by name or in effect. And this distinction is not metaphysical, but is a substantial distinction, clearly and unmistakably pointed out by Justice Matthews in Poindexter vs. Greenhorn, 114 U. S. 270, *290* wherein he said:

"In the discussion of such questions, the distinction between the government of a State and the State itself is important, and should be observed. In common speech and common apprehension they are usually regarded as identical and as ordinarily the acts of the government are the acts of the State, because within the limits of the delegation of power, the government of the state is generally confounded with the State itself, and often the former is meant when the latter is mentioned. The State itself is an ideal person, intangible, invisible, immutable. The government is an agent, and, within the sphere of the agency, a perfect representative, but outside of that, it is a lawless usurpation. The Constitution of the State is the limit of the authority of its government, and both government and state are subject to the supremacy of the Constitution of the United States, and of the laws made in pursuance thereof. So that, while it is true in respect to the government of a State, as was said in Langford vs. United States, 101 U. S. 341, that the maxim, that the king can do no wrong, has no place in our system of govern-
337 ment; yet, it is also true, in respect to the State itself, that whatever wrong is attempted in its name is imputable to its government, and not to the State, for it can speak and act only by law, whatever it does say and do must be lawful. That which, there-

fore, is unlawful because made so by the supreme law, the Constitution of the United States, is not the word or deed of the State, but it is the mere wrong or trespass of these individual persons who falsely speak and act in its name.

So that it follows that the State of Missouri is not a party either by name, nor in effect. And this Court has jurisdiction both of the subject matter and of the parties, to inquire into the questions in the case and on a final hearing decree whether the rates fixed by statutes are remunerative or confiscatory.

On what basis the Master shall report, iss not clear. Every person whether a passenger or shipper, is entitled to have efficient service at reasonable rates, which the company must give for such compensation. Whether such charges for every person can be fixed by a decree, is doubtful, and in any event will be attended with much difficulty. But if all earnings in the state for state business are to be taken in the aggregate, less expenses, the question is attended with difficulties, because of the matter of expense, it being difficult to apportion the expenses between the state and interstate business.

If the parties cannot agree, the Master should be directed by a supplemental order.

These cases should be brought to a final decree, and that decree such as can be carried to the Supreme Court for final determination, and not for a reversal because of an error of the Master or the Court in determining the expenses. What would be still more to the point would be for the Master to determine the expenses from the standpoint of both the railway company and the Attorney General. And there is no valid reason why the cases should not be brought to a conclusion within the next ninety days. And if this is not done, the delay will not be chargeable to the Court.

338 This memorandum opinion was written many weeks since, but withheld by request, awaiting the decisions of the Supreme Court in the Minnesota and North Carolina cases. Those cases were decided on the twenty third instant, adversely to the State officers. And it is deemed unnecessary to await the opinion, which this Court has not yet seen.

Kansas City, Missouri, March 31, 1908.

339 The Opinion filed on the 8th day of March, 1909, is in words and figures as follows:

In the Circuit Court of the United States, Western District of Missouri, at Kansas City.

No. 2988.

THE ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY, Complainant,

vs.

HERBERT S. HADLEY, Attorney General of the State of Missouri, Joseph P. Rice, John A. Knott, and Frank A. Wightman, Railroad Commissioners of the State of Missouri, et al., Defendants.

And Seventeen Other Like Cases, Being Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004, 3006.

Mr. Frank Hagerman for each and all of said Eighteen Railroad Companies.

Mr. Herbert S. Hadley, Attorney General, Mr. John Kennish, Assistant Attorney General, Mr. S. B. Ladd, and Mr. Frederick W. Lehmann, for all defendants, in all of said cases.

With Mr. Hagerman the following appeared for the railroads as designated:

Mr. W. F. Evans for St. L. & S. F. R. R. Co.
Mr. M. A. Low for C. R. I. & P. Ry. Co.
Mr. M. A. Low for C. R. I. & P. Ry. Co.
Mr. O. M. Spencer for C. B. & Q. R. R. Co.
Mr. J. G. Trimble for Q. O. & K. C. R. R. Co.
Mr. Gardiner, Lathrop for A. T. & S. F. R. R. Co.
Mr. S. W. Moore for K. C. & S. Ry. Co.
Mr. Geo. P. B. Jackson for M. K. & T. R. R. Co.
340 Mr. J. L. Minnis for Wabash R. R. Co.
Mr. R. A. Brown for St. J. & G. I. Ry. Co.
Mr. E. L. Scarritt for C. & A. R. R. Co.
Mr. John H. Lucas for K. C. C. & S. Ry. Co.
Mr. M. L. Clardy for Mo. Pac. R. R. Co. and St. L. I. M. & S. R. R. Co.
Mr. J. D. Hostetter for St. L. & H. Ry. Co.
Mr. S. H. West for St. L. S. W. Ry. Co.

Opinion.

SMITH MCPHERSON, *Judge.*

1. Each of the eighteen railroad companies is doing a general railroad business within the State of Missouri, all but one doing both a state and an interstate business. Under the general railroad statutes of the state, the railroads were classified under three classes, the one class being allowed to charge for passenger rates three cents per mile, and the other two classes four cents per mile. Freights likewise were classified with certain maximum rates. The Railroad

Commissioners of the state were authorized to fix and establish rates, not in excess, however, of these maximum rates fixed by statute.

In the year 1905 the Legislature of the state by statute which took effect June 16th, 1905, provided for certain maximum charges. On the day the statute took effect each of the railroad companies filed their bills of complaint herein against the Attorney General and Railroad Commissioners, asking that they be enjoined from enforcing the statute upon the ground that the rates thus fixed were not remunerative, resulting as is alleged, in the taking of their property without compensation. A restraining order in each case was issued, and within a few days thereafter upon notice and full hearing, a temporary writ of injunction as prayed was issued. Several months thereafter the cases were referred to a Special Master to take the evidence and make his findings of fact and report the same to the Court.

341 In 1907 the Legislature of the state repealed the statute of 1905 and enacted a substitute therefor, which act was to take effect in June, 1907. On or about the day the statute was to take effect, each of the complainants filed its amended and supplemental bill setting forth the pendency of the actions and the action theretofore taken by the Court therein, and asking that the enforcement of the statutes, one of which fixes certain maximum freight rates, and the other, passenger rates of two cents a mile, be enjoined on the ground that such rates were not remunerative, but confiscatory, and if enforced, would be taking the property of the railroad companies without compensation. At or about the same time the state officers instituted proceedings in certain State Courts of Missouri against the railroad companies asking for an order that said two statutes of 1907 be enforced.

The Attorney General and his associates insisted that an entirely new situation was presented and insisted that the proceedings were instituted in the State Courts in advance of filing the Supplemental bills herein, and insisted that the State Courts had first acquired jurisdiction of the subject matter which would be to the exclusion of any action by this Court. The railroad companies insisted that the general subject matter was covered by the original bills of complaint and defendants' answers thereto, and that the statutes of 1907 should be carried forward by supplemental bill. It was likewise most earnestly contended that the actions in this Court were in effect against the State of Missouri in contravention of the Eleventh Amendment to the Constitution of the United States. But this Court after the fullest argument and consideration adjudged that this Court was not seeking to take jurisdiction against the State of Missouri as a state, and that the very office and nature of the supplemental bill as recognized from time immemorial by the equity practice required this Court to take cognizance of the supplemental bills and proceed with the litigation. (161 Fed. 419.)

342 In June last by agreement of parties, the Court revoked the previous order of reference to the Special Master and directed him to return to this Court the evidence he had already taken, and ordered that the case be tried upon oral testimony and

such documentary evidence as the respective parties might offer. The evidence has been concluded, and the cases have been fully argued, and are now for final decree.

2. Many believe that the better and safer practice would be to confine all litigation to the State Courts wherein is involved the validity of rates to be observed by railroads and other public utilities when such rates are fixed by ordinances of a city or statutes of a state. It is insisted that this would be more deferential and more in a spirit of comity to first allow the State Courts to pass upon such questions. It is urged that the decree of a State Court could be carried to the Supreme Court of the United States for final decision.

This is plausible and convincing to men who have not thoroughly considered the question. It is plausible, because such a course can be followed. But every thoughtful and patriotic man well knows and believes in the proposition that the Supreme Court of the United States should ultimately pass upon all questions arising under the Constitution of the United States. And the question whether rates thus fixed by ordinance or statute are confiscatory or remunerative, is one arising under the Constitution of the United States, and that question is wholly a question of fact, and is not longer an open question as to the law. This being so, the question cannot be passed upon by the Supreme Court of the United States on these questions of fact then there is a conflict in the testimony. Section 709 of the Revised Statutes of the United States is the only authority for taking a case from the highest court of a state to the Supreme Court of the United States, and the procedure thereby allowed is by writ of error. And the office of a writ of error is to authorize an appellate court to review questions of law and not to review questions of fact.

343 So that when a case goes from the Supreme Court of a state to the Supreme Court of the United States, it can only go by writ of error, and the Supreme Court of the United States necessarily must take all questions of fact as being foreclosed by the State Courts. Therefore, when the case is wholly dependent on controverted questions of fact, it is utterly useless to carry the case to the United States Supreme Court from the decision of the State Courts, as an affirmance necessarily will be ordered, and the question as to whether the United States Constitution is being trampled down cannot be considered. There is no other method of reviewing the decision of the State Court by the Supreme Court of the United States than by writ of error, and this is so in chancery cases as well as in actions at law.

State Corporation Com. of Va. v. Atlantic Coast Line Co. recently decided by the Supreme Court of the U. S.
Bement v. National Harrow Co., 186 U. S., 70, 83.
Dower v. Richards, 151 U. S., 658, 666.
Egan v. Hart, 165 U. S., 188.
Adams v. Church, 193 U. S., 510.
Chrisman v. Miller, 197 U. S., 313, 319.

It follows that all efforts to enforce the trial of such questions in State Courts would result, if successful, in having the State Court

finally determine when the National Constitution as the Supreme Law of the land, shall be applied. The Supreme Court of the United States is the tribunal to finally determine all questions, including those of fact, wherein the National Constitution is involved.

3. Upon their face the statutes in question are with reference only to state commerce. But it is urged that they are void because in effect they directly have to do with interstate commerce. The facts are as follows:

Between Kansas City and the Joplin mining district there are three lines of railway. The Missouri Pacific between these points is wholly within the state; and the other two, partly within
344 and partly without the state, and therefore between the two Missouri cities of Kansas City and Joplin, are doing an interstate business under the decision of Hanley v. R. R., (187 U. S., 617.) The same situation exists between the cities of St. Joseph and Kansas City, two of the roads being wholly within the State between the two points, and two partly within and partly without.

And between the cities of St. Joseph and St. Louis such situation is emphasized, the Burlington road being wholly within the state between the two cities, and the Missouri Pacific a part of the distance being within the State of Kansas. The facts are that when the Missouri statutes lowered the passenger rates on the roads wholly within the State between said points, the interstate roads between said points were compelled by competition to lower their rates to correspond with the state rates thus fixed by statute. By reason thereof the argument is that the Missouri statutory rates control the interstate rates between the cities named, and therefore are void as being in conflict with the Commerce Clause of the National Constitution.

During the period of railroad building, for a time the western termini were at the Mississippi River. By reason thereof, and by reason of competition on account of river transportation, the railways fixed rates from the East to that river. After a time roads were completed to the Missouri River. Rates to points on that river were fixed on rates to the Mississippi River, plus rates between the two rivers. And for thirty years or more rates have been thus fixed. And as the Missouri statutes lower the rates between the two rivers, the argument is that the statutes lower the interstate rates from the East to Missouri River points, and to points to the West.

This presents a great question, and one which is far reaching and in importance cannot be overstated. In the great case of Ex parte Young, (209 U. S. 123,) decided but last year, the Su-
345 preme Court in its majority opinion in speaking of this, said: "The question is not, at any rate, frivolous." But the point was not decided. But here the question is fairly and sharply presented for decision, with no precedents directly in point.

From the days of the Confederacy to the present time there have been clashings between the National Government and the States, owing, in part to the ever changing trade and commerce, and in part to the different schools of belief as to our system of government. And the pendulum will ever move back and forth. Even those who most strongly denounce the Kentucky Resolutions, and the doctrine

of nullification, are often the first to forget that they believe in not only the express but the implied powers of our government as taught by Marshall in McCullough v. Maryland, (4 Wheaton,) and that this government is one of the whole people. Such as thus believe are often the first to advocate and rush through in the form of state regulation, measures for their own state, regardless of the rights of the people of other states. Neither the Ohio River nor any other boundary has been the dividing line. Many of the cases in which state statutes have been declared void by the Supreme Court are statutes requiring a license to sell imported goods; imposing a tax on bills of lading for gold carried out of the state; imposing taxes on alien passengers; imposing taxes on passengers and merchandise carried into or out of the state; taxing drummers; regulating telegrams sent to other states; taxing those who use wharves; requiring inspection of animals for slaughter; and other like statutes in principle. All such statutes have gone down by reason of the Commerce Clause, and the uniform holdings of the Supreme Court.

The Commerce Clause gives Congress the power to regulate commerce:

1. With foreign nations;
2. Among the several states;
3. With the Indian tribes;

346 As to the first and last no doubt Congress can not only regulate, but can prohibit. It is another proposition whether commerce can be prohibited among the states.

One of the methods resorted to for the construction of Constitutional provisions, as well as of statutes, is to ascertain the then existing evils. We find that New York and other sea coast states placed burdens on commerce from inland points to sea coast points and across such states for shipment by water. It was burdens on commerce that the inland localities complained of, and that such burdens should not be imposed, was the reason for adopting the Commerce Clause. If there had been no such burdens, it is likely that there would have been no Commerce Clause, and possibly no Constitution. I have searched diligently, but find no case decided by the Supreme Court declaring a State statute void that did not in some form and in some manner place a burden on, or in some way hamper or obstruct, commerce from or to another state.

The case of Louisville & Nashville R. R. v. Eubank, (184 U. S., 27,) comes more nearly sustaining the proposition that the Statutes of Missouri impinge upon the Commerce Clause than any other case that I recall. There the State of Kentucky by its Constitution provided that more should not be charged for a short than a long haul. The company had rates in force from Nashville, Tennessee, to Louisville, Kentucky, which were less than was being charged from points in southern Kentucky to Louisville. This was held by the Court of Appeals of Kentucky to be in violation of the State Constitution. So that we have a case of a state law, with the decision of the State Courts read into it, providing that more shall not be charged for a short haul wholly within the state, than for a long haul partly without the state. This must be so, because the same

provision of the Kentucky Constitution when applied to places all within the state was upheld by the Supreme Court, as will appear from the case of Louisville & Nashville R. R. v. Kentucky, 183 R. S., 503.

347 And the case of Wabash &c., R. R. v. Illinois, 118 U. S. 557, was decided in like manner, because and for the only reason that the Supreme Court of Illinois had so ruled as to read into the statute the objectionable feature.

But the Missouri Courts have not so construed these statutes of the state. When they do so decide, then the Eubank, and Illinois cases will be the precedents to thwart such legislation as thus construed. In the meantime there is no belief that the Missouri Courts will so decide.

The case of Hall v. De Cuir, 95 U. S. 485, is cited by counsel for the railways. Louisiana had a statute requiring carriers to receive and carry passengers without distinction on account of race or color. The steamboat in question plied between New Orleans and Vicksburg, doing both a state and an interstate business. The vessel was duly enrolled and licensed for the coasting trade. The boat had an upper and a lower cabin, the upper for white people, and the lower for colored persons. The plaintiff De Cuir was a colored woman, and took passage at a landing in Louisiana for another landing in that state. Being refused admission to the upper cabin solely because she was colored, she was awarded damages in a State trial court, which judgment was affirmed by the State Supreme Court. The Supreme Court of the United States reversed the judgment. Two reasons were given for the reversal, the one by Justice Clifford on the ground that navigation of the Mississippi River is wholly within the control of Congress. The other opinion was by the Chief Justice, who grounded his opinion upon the proposition that with the objections of most people to associating and rooming with colored persons, that to allow a colored woman to be carried in the first cabin, even though but for a ride within the state, would drive white passengers seeking an interstate ride from the boat. Or, as I have hereinbefore stated the statute in effect placed a burden on the interstate business. After discussing the question, and the many and great difficulties in applying the Commerce Clause, the Chief Justice said:

348 "But we think it may safely be said that State legislation which seeks to impose a direct burden upon interstate commerce, or to interfere directly with its freedom, does encroach upon the exclusive power of Congress."

The state statute in order to be declared void, must by its terms, and recitals interfere directly with commerce to or from another state, or the statute by construction given it by the highest court of the state must so operate in its results. But here we have no such recitals in the statute, and it has not been so declared to mean by the Missouri Courts. And while counsel for the railways do not in terms so insist, they in effect urge that the laws of political economy, custom and convenience shall act as a substitute for Missouri statutes, and the decrees of the Missouri Supreme Court. In other words, they in effect, and I believe in language insist that the rules formu-

lated a third of a century ago for making rates first to the one river, and then between the two rivers, and the laws of competition, shall be regarded as the equivalent of statutory law. I am mindful that it is believes by many that to not recognize these laws of trade will impair if not destroy the great cities like St. Joseph, Kansas City and St. Louis. I am mindful of the fact that between the two rivers the distance by the Burlington is but 198 miles, with other roads 300 miles or more, and that the shorter road necessarily fixes the rates between all points on the rivers. But competition does that, and the statutes are silent. The statute may or may not be unfair. I am considering the Commerce Clause as to its bearing on statutory enactments, and am not forgetting that many valid statutes are unfair, and some even unrighteous.

I have believed heretofore that the rights and duties, powers and prerogatives of any one state are the same, neither more nor less, than those of any other state, and this is so whether we compare two or more of the original Thirteen, or one of the older with one of the newer states. But in effect the argument of counsel for the railways is that this is not so. Missouri and Maine were ad-
349 mitted into the Union the same day by the same enactment.

Maine has but its percentage of commerce into and out of the state, with no trans-state business by reason of its geographical position, and has no large city. Missouri is a central state, with large cities, one of which is third in importance as a wholesale center, and second to but few as a manufacturing place. St. Louis and Kansas City are the gateways for both commerce and passengers, surpassed only by one, or possibly two other places. These facts are of tremendous importance to those who legislate either for the state or the nation. That legislation can be harmful to these great interests, any thoughtful person can readily see. But that these facts, important as they are, can be used to give a construction to or coloring of the Commerce Clause, I do not believe. In my opinion it is much the wiser to contend for the strength and power of the nation, by insisting also upon the rights and powers of the states as was intended they should have. For a third of a century it has been the recognized constitutional construction that the states have the power within defined limits to regulate charges by railways wholly within the state. And to now say that one state like Maine can regulate charges by a railway for transportation wholly within the state, and that Missouri cannot because flanked by two great rivers, and by a long time custom in fixing rates is to announce a rule not heretofore recognized and in my opinion one entirely illogical.

It may or may not be true, that it would be for the better to have all the interstate railways of the country, doing both a state and an interstate business, under one supervising authority, such as a commission, regulating both classes of business. But under the Commerce Clause can this be done?

Employers Liability cases, 207 U. S. 463.

Wabash R. R. v. U. S. (7th Circuit) — Fed Rep.—. 9 Columbia Law Review, 38.

U. S. v. Colorado &c., R. R. Co., 157 Fed. 321 (8th Circuit).

350 Difficult as these problems are, they can and will be solved, and for the right. Pessimists discourage. However, their statements that everything is wrong, and will grow worse, must be heavily discounted. Because railway systems reach into many states and are units, crossing state lines arbitrarily fixed, a hopeless condition is not thereby brought about. It is not true as some say, that each state can lower the rates to confiscation, as all know who have read the decisions to any purpose. I believe as firmly as does anyone in the power and the rights of our general government, and when the clashings come as to the power of the state and the general government, let the doubts be solved in favor of the government. But as to some matters there are no doubts, and two of these are that the Constitution is the supreme law of the land, and that as to all local matters the states are in control. All should insist upon both.

4. It is contended that the statutes are void because of the excessive penalties, reliance being based on the case of Ex parte Young, (209 U. S. 123). Until the decisions in the Minnesota cases, (134 U. S. 418, and 467) it was an open question whether a review of rates fixed by a legislature or a commission acting under a legislative authority, could be had by the courts. The Minnesota statute authorized a commission to fix certain rates, which rates thus fixed should be final and conclusive. The Supreme Court of the State adjudged that such rates were not merely advisory, nor prima facie reasonable, but conclusive, and not subject to review by the courts. (37 N. W. 782.) But the United States Supreme Court reversed that decision, and notwithstanding the strong dissenting opinion by Justice Bradley, concurred in by Judges Gray and Lamar, and Justice Miller hesitating, the question is now at rest, and the courts not only can, but must, determine the question whether such rates are reasonable.

In time the Legislature of Minnesota believed it could in another way make its determination as to rates conclusive and beyond the powers of the courts to interfere. This was attempted by 351 providing penalties for violations, to that which was equal for one week's business to life imprisonment for all officers and agents, and confiscation of all the railway property, if resistance by litigation was made, and such litigation failed. The decision in Ex parte Young followed, the Supreme Court failing to see the distinction between a statute providing that agents should become felons with life imprisonment pronounced, and all corporate property seized and confiscated, if an unsuccessful contest should be made in the courts.

The Statute of Missouri of April 15, 1905, covered by the original bills herein, fixes the only penalty for violations by allowing treble damages and a reasonable attorney's fee. Citation of authorities need not be made to sustain such penalties. And in any event that statute has been repealed. The two cent passenger rate statute of February 27, 1907, provided for a penalty of not less than one hundred nor more than five hundred dollars. What shall be deemed a complete or separate offense is not defined. The freight rate statute of March 19, 1907, provides for no minimum penalty, but the

same shall be a fine not exceeding five thousand dollars. Imprisonment is not designated under either statute, unless by some general statute for the non-payment of the fine; while under the Minnesota statute the penalty for each offense was fixed at a fine of not more than five thousand dollars, or imprisonment in the State prison for not more than five years, or both.

This objection to the Missouri statutes is without merit.

5. Evidence is before the Court tending to show that a large number of men have been discharged from the service of the railroad companies by reason of the reduction of rates. And this fact is urged as one element that should be considered. It is true that before interest can be paid on the bonded debts, that operating expenses, including labor, and materials, largely made up from labor, must be paid. And as of course all of these including interest must be paid before dividend checks are issued. The states should
352 and usually do attempt to legislate in the interest of laboring men. And if the legislation under consideration is hostile to their interests, the legislature, and not the courts, have the responsibility. I agree to all that was said in argument in their behalf. I agree that in sobriety, and intelligence, and faithfulness to duty, they are surpassed by no other class of men. Their dangers are great, and the people owe them much. But if employés are reduced in number, or now or later on their compensation will be reduced, and if such results are by reason of legislation, then their remedy, if they have one, must be sought elsewhere than in the courts.

6. It is urged in argument that the reduction of rates will impair the service to the public. The charter of a railroad is an implied contract with the state. The company is given such right under such contract to perpetually operate its road. The state agrees that it shall be reasonably and sufficiently remunerated according to the business done. The company agrees to furnish reasonably efficient service. To furnish no service is a complete breach of the contract. To furnish a partial service is a partial breach. What is a reasonable service, is a question of fact dependent upon the circumstances of each case.

Thus it is that the Supreme Court has held that in some instances state legislation is valid which requires through and interstate trains to stop at important towns to let off and take on passengers, state and interstate.

Mississippi v. R. R., 203 U. S. 335.
L. S. & M. S. Ry. v. Ohio, 173 U. S. 285.
Gladson v. Minnesota, 166 U. S. 427.

And in other cases such state legislation has been declared invalid.

R. R. v. Illinois, 163 U. S. 142.
R. R. v. Illinois, 177 U. S. 514.
R. R. v. South Carolina, &c., 207 U. S. 328.

353 All those cases turned on the facts, and the question of fact was as to the service the public should have.

Of course the service rendered, and the compensation received

should have a proper relation. The expenses incident to, and that can be specifically located in connection with, a particular train, are not all the expenses to be accounted for, as will hereafter be discussed. But it is true that without reasonable compensation there cannot be reasonable service. It is common information that the public in many localities is demanding increased service.

But this phase of the question is so indefinitely covered by the evidence, and is so general in the very nature of the question that no decree can be rendered herein that will cover the proposition.

7. It is urged that these statutes are void because they are not enforceable as to some of the railway companies within the state, and the claim is, that being void as to some, they are void as to all. It is conceded in argument that as to two roads, the St. Louis & Hannibal, and the Kansas City, Clinton & Springfield, the rates fixed are not compensatory. The State's experts agree to this.

Usually statutes fixing rates for railroads to observe, classify the roads according to their earning power, and fix the highest rates for those earning the least. But this was not done, except that railroads of a length not greater than forty-five miles not owned, nor leased nor controlled by a trunk line, may charge four cents per mile per passenger.

The sole theory upon which rates are adjudged void can only be that the rates are not compensatory, and to so decree, the Court must have the complaint of each and every road making the claim. Complainants have recognized this by their counsel in bringing as many independent actions as there are railroads complaining. Whether there are any other railroads within the state than these eighteen complainants, neither the allegations of the pleadings nor the evidence show. Perhaps the Court should take judicial
354 notice of whether there are other roads or not. Be this as it may, the Court is not advised. I assume there are no other roads within the state than these eighteen.

The record shows that two of the cases, those brought by the Rock Island and the St. Louis, Kansas City & Colorado, have been consolidated for trial purposes, the one road having become the owner of the other since the litigation commenced. The record further shows that nine cases were tried, and that the other eight cases were to be covered by decrees the same as decrees in some of the cases tried, the particular cases being designated by the record. All this shows to my mind that complainants' counsel rightly conceived the theory upon which these bills of complaint were presented. The record shows further that before the Master, there were many attempts for position on both sides as to what cases should be tried, the Attorney General and his associates desiring that the Burlington and two other strong roads having the short lines, should be heard, and the others either continued or that decrees in the other cases should follow the decrees in the cases of the strong roads. Counsel for the railroad companies were desirous of trying the cases brought by some of the other companies, or at least that the roads should be classified into three or four classes, but that the Court should hear

only one case of each class. This emphasizes the theory that was in counsels' mind all the way through this litigation.

In one respect at least it seems to me that these statutes should be declared valid or void as the facts may warrant, as has been frequently done with reference to ordinances of cities. The ordinances of cities regulating speed both for trains and teams are declared unreasonable, and therefore not enforceable as to some parts of the city, and valid and enforceable as to other parts of the city not so densely populated. These statutes are not void upon their face. The company which alleges that they are void must make a showing
that the rates, considering all the facts and circumstances,
355 are not compensatory as to that particular road, failing in
which, the statute will be enforced, and successful in which,
as to that particular road the statute will not be enforced.

The case of R. R. v. McKendree, (203 U. S. 514), is not in point, because there the question was with reference to an order of the Secretary of Agriculture which was void in part and was not separable, it not being possible to eliminate the valid from the void features.

The Cotting case, (183 U. S. 79), was decided by reason of an entirely different principle. The statute in that case on its face shows that a company doing little business was not to be regulated, while the company doing much business was made subject to the statute. And by reason of that vice, the statute was held void. That the Cotting case is not in point, see:

St. Louis, &c., v. Illinois, 185 U. S. 207.
McLean v. Arkansas, — U. S., —, (January 4, 1909).

The Connolly case, (184 U. S. 540,) was likewise decided in part at least because the statute did not apply to all classes of persons engaged in a like business, and that the statute was not separable, the valid from the invalid.

The case of Ju Toy, (189 U. S. 253,) the Trade Mark cases, (100 U. S. 82,) and the recent case of Howard v. R. R. (28 Sup. Ct. Rep. 141,) were decided by reason of this same principle namely, as to whether the statute is separable or not.

Therefore the holding is that these statutes are not void upon their face, and cannot be declared void for the one reason that the evidence shows that they are not enforceable as to two or more roads.

8. The state earnings are made known to a certainty, concerning which the experts on both sides agree. And whether in earning them the company gains a profit, or sustains a loss, is dependent upon the expense in making such earnings. Some of these expenses can be definitely specified, but others, like maintenance of
way, salaries of all officers including ticket agents, handlers
356 of freight, terminal expenses, compensation of many laborers,
and other things, are all occasioned for carrying both freights
and passengers, state and interstate, and miscellaneous of each. And herein is the problem how to make the apportionment.

The track mile or train or car mile does not furnish the solution, because everyone agrees that neither of those methods will do, and

no one of the experts or counsel on either side asks for such a solution. Therefore there is and can be but one of two methods adopted. Neither can be relied upon if mathematical precision is demanded. But the one more nearly correct and satisfactory, is the one to be adopted. And that is what is done in litigation concerning injuries and death; the age, earning power, loss of time, can be fixed, some with certainty. How many years the party had before him is fixed by mortality tables, wholly unreliable as to the individual, but fairly certain as to the average.

In taking property under the power of eminent domain, we know the assessed value, the amount of taxes, the rents, and maintenance. Some or all these elements are put in evidence, while all other is matter of opinion, concerning which witnesses and jurors differ. And so it is in most litigation.

9. The theory to now recognize must be either the proportion of earnings, state and interstate, or ton and passenger mile.

That it costs more to carry either freight or passengers proportionately for a short than a long haul, is undoubtedly true, although all the elements are not more expensive. Local trains generally have poorer and older and cheaper cars and locomotives. But their speed is greater between stations. There are many stops. They carry proportionately much greater dead weight. They do much switching, and there are many delays. Their crews are paid more proportionately to distance and what is carried. The trains are daylight trains only. With freight the carload and number of cars are much the less, and from station to station grows less, and is
357 largely made up of single parcels, boxes, and individual shipments from as many consignors to as many consignees, first put in one station, and at the end of the trip into another station by the company. Usually there are two terminals, comprising an enormous amount of the investments and expenses of the company. The local train is seldom loaded to the capacity of the engine, to the loss of much of the investment and expense. The clerk hire, selling tickets, issuing bills of lading, making expense accounts, and auditing and making records, are attended with like expense for the small and the large items. Many stations would be done away with but for local business.

In nearly every instance enumerated, as to the interstate, which includes trans-state, the reverse is true, although much magnified in my opinion as to terminals, and particularly as to trans-state, because in my judgment some of the interstate business has two terminal expenses within the state. The two gateways in Missouri through the one or the other of which a large percentage of business both interstate and trans-state passes, are Kansas City and St. Louis. And at both of these places the investments are very large, and of course whether owned or rented, the expense is practically the same. But these terminals are for both. And while I believe the terminal expenses at St. Joseph, Kansas City and St. Louis as to trans-state business is minimized, I do not agree with the experts who claimed that there are none of these expenses. Their cross examination shows this to be a mistake.

But from the great weight of the testimony, it can well be said that the ton mile is not reliable, and the revenue is more nearly correct, as showing that it costs more by twenty-five per cent, to carry passengers, and fifty per cent to carry freight locally than it does when interstate. Generally speaking this is undoubtedly true. There are exceptions, one of which is shown by the Burlington with its three roads from St. Joseph, the one to Villisca, Iowa, another to Creston, Iowa, and a third to Chariton, Iowa. They are all interstate roads, each with two terminals, but each operating only local and daylight trains. The Wabash illustrates this with roads across the arbitrary state line between Missouri and Iowa.

358 And there are other illustrations, but less noticeable, in the testimony.

But all these are exceptions and the testimony establishes the rule as stated.

The Missouri Legislature has recognized the proposition in all of its rate statutes, and particularly in the statutes now assailed, that it costs more per mile for a short than a long haul.

See Act approved April 14, 1905; and the Act of April 15, 1905, covered by the original bills herein. The passenger rate statute under consideration fixes a two cent fare for all trunk lines, and four cents per mile for a road less than forty-five miles in length.

The freight rate statute under consideration, in every schedule recognizes the principle that proportionately there should be more charged for a short than a long haul. For instance, Class D allows a charge of five cents per hundred for carload lots for the first twenty-five miles, and one-half cent for the second and additional twenty-five miles.

And commencing with the statute of Pennsylvania of 1846 chartering the Pennsylvania road, to the present time, every statute upon the subject fixing freight rates, and many of them fixing passenger fares, recognizes this principle. So that while it is a legislative function to fix rates, we have innumerable legislative recognitions of the greater cost for weight per mile for a shorter than a longer haul, and in some instances as to passengers. And no state has so recognized this to a greater extent than has the Missouri Legislature.

And the courts passing upon the question, have invariably recognized this as being so, and that the revenue theory is the correct one as against the ton mile.

This was so recognized by the Supreme Court of Pennsylvania in case of Railroad v. Pennsylvania County, 68 Atl. Rep. 677, but not discussed.

In R. R. Co. v. Tomkins, 90 Fed. 363, Judge Carland, of the South Dakota District, in passing on the statutes of that state, said:

359 "This Court believes that it is fair and just to first ascertain what per cent. of the total gross earnings in any one year the total local earnings are for that year, and having ascertained that per cent to take the same per cent of the total value of the property as a fair value upon which to fix local earnings."

The decree was reversed and although an equity case, remanded

because of a failure to make a material finding. (176 U. S. 167). The same case under the title of R. R. Co. v. Smith, 110 Fed. 473, on final hearing resulted in a decree enjoining the rates, and the question of expenses was arrived at by the extra cost and on the revenue theory.

The case of R. R. Co. v. Keyes, 91 Fed. 77, is an opinion by District Judge Amidon, concurred in by Circuit Judge Thayer, enjoining North Dakota statutory rates. The argument of the opinion condemns the ton mile theory, and adopts the revenue theory. The criticism of the case is, that conditions in sparsely settled North Dakota are not like those in this state. But the question of which theory was the more accurate for computation, was fully covered, and the ton mile was condemned.

In re Arkansas R. R. Cases, (163 Fed. 141,) decided but a few months since by Judge Van Devanter of this Circuit, a temporary injunction was issued against the enforcement of the Arkansas statutory freight and two cent passenger rates. And in most respects the State of Arkansas with reference to rates is like that of Missouri, especially the south half of Missouri. Judge Van Devanter in discussing this question said:

"Other standards are suggested, but the proofs indicate that none of them is as satisfactory or accurate as is the difference in cost in its relation to the revenue."

And the proofs, including statistics and tables and some of the same expert witnesses on each side, were the same as in the cases at bar.

The great case from Nebraska of Smyth v. Ames, was heard on the Circuit by Justice Brewer on oral testimony, as the cases at bar have been heard. The entire discussion of the question
360 by Justice Brewer in a lengthy opinion *in* on the extra cost and revenue theory, entirely ignoring the ton mile theory. That case resulted in the state statutory freights being enjoined by Justice Brewer, District Judge Dundy concurring.

The case was carried to the Supreme Court, (169 U. S. 467,) resulting in an affirmance of Justice Brewer's decree. The opinion of the Supreme Court by Justice Harlan is exhaustive, and the tables used by him to show the facts, and the entire argument is with reference to the extra cost and revenue theory, utterly ignoring the ton mile theory.

Recurring to the Tomkins case, (90 Fed. 363,) above alluded to, that case was reversed by the Supreme Court, (176 U. S. 167,) and the question of fact was only discussed from the revenue theory. The reversal was only because the lower court recited that it was unable to ascertain what was the actual cost of earning the local earnings for certain years. But as the lower court on the first hearing proceeded on the extra cost and revenue theory, and as that was what was discussed by the Supreme Court, and under the Mandate the case went to decree, (110 Fed. 447,) on the revenue theory, I am convinced that the Supreme Court for the guidance of trial courts has adopted the revenue theory as the one more just and equitable both to the patrons of the road and to the companies.

So that we have the Supreme Court in the two cases recognizing the revenue theory. Two Circuit Judges of this Circuit have so held. And the same holdings have been made by at least three District Judges, and the Supreme Court of Pennsylvania impliedly, although the argument in that opinion is not strengthened by reason of a statement as to the measure of proof, concerning which the minority opinions without doubt are correct.

As an argument against the revenue theory, and for the ton mile theory, no court has spoken in so far as counsel on both sides and I are advised. In some phases this is a question of fact, or logic, or argument, or opinion, partaking of all. But so many eminent courts have thus spoken, even though not a question of law, and even though the traffic in the states differ, yet such opinions tend most strongly to create an undoubted belief that the cost for
361 carrying both passengers and freight locally is greater proportionately than for doing a long or interstate business, and that the revenue theory is the only one to apportion the cost of each business.

The Wisconsin Railroad Commission made an exhaustive and thorough investigation of these questions two years since. Evidence of both sides was heard. Experts interested, and those not interested, testified. Many months of time were given to the hearing and in reaching conclusions. A valued report was the result. The findings and conclusions were:

1. The cost of carrying local and state freight is greater than for carrying interstate freight and passengers.

2. That this extra cost must be considered, and then take the gross earnings as the basis upon which to allot expenses between the state and interstate business.

3. That less than two and one half cents per mile for local or state passengers was not remunerative in the State of Wisconsin.

10. When the statutes in question were enacted, it was believed by many that by reducing the fare, there would be be much more travel. For a month or so this proved to be true. But with the novelty gone, the testimony shows that the increase has been less than three per cent, and more nearly one per cent.

It was likewise believed by many that with the abolition of passes and other forms of free transportation, that expenses would be lessened and receipts increased. Ministers sometimes received free transportation, but generally at half rates. Many lawyers and doctors received passes under guise of retainers for services never performed. Bankers received them under the claim that it was compensation for signing bonds, and cashing Chicago and St. Louis exchange. Politicians demanded, extorted and received them for supposed influence. Officials received them as a courtesy. Many newspaper concerns received them, from the proprietor and editor-in-chief down to the typsetter, (relatives included,) under the pretense that it was an exercise of liberty of contract, for which the newspaper published the arrival and departure of trains,
362 with an occasional local and sometimes abbreviated plate matter. To receive them was often followed by charges of

corruption and to refuse them, by charges of demagogy. Every person conceded it to be a wrong system, and most people were advocates for its abolition, except as to the class to which he belonged. But it was abolished, and does not longer exist, and the evidence shows that as to state earnings, the passenger revenue is increased by reason thereof less than one per cent.

11. This leaves but one question for decision and that question largely one of fact. The question is whether the traffic wholly within the State of Missouri generally referred to in the evidence as local traffic, can be carried under the freight rate statute of 1907 and the passenger fare statute of 1907 at such profit as will give a reasonable return after paying expenses upon the investment, or whether such traffic is carried at a loss or less than such reasonable profit.

Thousands of pages of testimony, taking weeks of time, have been filed. This testimony was orally presented, part to the Master, and part to the Court, accompanied with volumes of statements, reports, schedules, and tables. Every phase of every question of both debit and credit has been worked out, tabulated and filed. These exhibits are the result of something like one year of work by the expert accountants representing both sides, as a result of their examinations of train reports, waybills, auditors' books, and of the accounts of the passenger and traffic departments of the several roads. This work required not only much time, but energy, and patience, and learning, and great skill. But each side had accountants of the highest character, and possessing all of those qualifications. The four accountants, Mr. Peabody, and Mr. Johnson representing the railway companies, and Mr. Taliaferro and Mr. Hamilton representing the State, impressed me after hearing them testify and being in consultation with them for ten days after the cases were submitted, that the sole purpose of their work was to exhibit the truth, differ-
363 ing only as to extra cost, and that difference of extra cost largely confined to the local passenger traffic, and differing as to the theory as to how the expenses between local and interstate traffic within the state should be divided. Aside from those two questions there is not the slightest variance between the testimony of the experts upon the two sides. During the ten days following the submission of the cases, they and the Court being alone, at the request of the Court they prepared a statement in each of the nine cases submitted, which have been ordered filed. To each of the nine statements is appended a certificate showing the time covered, and that such statement correctly shows the results of the various assumptions set forth therein, which certificates were signed by the four expert accountants. Seldom, if ever, is a Court under greater obligations to expert accountants representing the two sides, than the Court and all parties, the railroads and the public, owe these four gentlemen. Usually experts representing different sides do not agree to anything. Here experts representing the different sides agree to everything pertaining to the accounting, the differences only arising as to the basis.

The Court is likewise much indebted to counsel on both sides, who for four days argued these cases with a fairness, and wealth of learn-

ing, and eloquence seldom displayed at the bar. And now after the fullest investigation of the record, the Court has reached the conclusion that upon this question of fact the statutory rates fixed by either and both statutes are not remunerative. And it only remains for the Court to give the reasons for such conclusion.

And in giving these reasons, clearness is added by eliminating those things so clearly established by the evidence, or so nearly conceded in matters of law as not to be debatable.

1st. The unquestioned and undoubted rule is that there is a presumption both of fact and of law in favor of the validity of every legislative enactment. The railway companies have the burden of removing this presumption, and showing that the statute clearly, or as some Courts say, palpably, and others say, be-
364 yond reasonable doubt, that the statute is invalid. In these cases the Court has recognized this rule. The authorities upon this question form a long and unbroken line, with the single exception of the majority opinion in the Pennsylvania case decided a year ago. (68 Atl. Rep. 676.) And that one authority is not persuasive.

2nd. All testimony and argument bearing upon the question as to what consideration the Legislature of Missouri gave to these enactments, is utterly immaterial. Much was said in argument as to the message of Governor Hughes of New York two years ago in declining to approve the two cent fare statute of that state. Governor Hughes had the moral courage to veto a measure of popular favor because as he believed the question had not been fully considered. But the relations of a governor to proposed legislation, and those of a Court to legislation consummated, are entirely different.

3rd. Most of laymen and many lawyers believe that the question is whether the railway company as a system is earning sufficient revenue upon the value of the property of the system. They believe that if the Burlington, Santa Fe, Wabash, or any other railroad system is earning such money as will pay all charges and expenses including taxes and interest, with reasonable dividends to the stockholders, that state rates for state business must stand. Of course no one believes this who has given the slightest attention to the question. That precise question was before, and was decided by, Justice Brewer, (64 Fed. Rep. 165), and affirmed by the Supreme Court in the Nebraska case of Smyth v. Ames, (169 U. S. 466). The only question is as to Missouri rates, less expenses properly charged against the same. And if this balance does not leave sufficient to pay a reasonable return, the law is invalid. And if the railroad system of any company is earning more than a reasonable return by reason of interstate rates, which affect the people many times more than local rates, and if such interstate rates are too high, Congress either act-
365 ing alone or through a Commission must make the corrections.

The Supreme Court during the present year in the case of City of New York v. Consolidated Gas Company of New York (211 U. S. —), decided that six per cent was fair and right to be given to the owners upon the true valuation. My opinion is that while a gas plant is in

some respects different from a railroad, that a railroad property, properly built, and properly managed, should over and above expenses make a return of six per cent per annum. And considering all the evidence, the evidence fairly shows that all of these roads were properly and economically built and are being properly and economically managed, and that after paying the expenses for maintenance and operation, that there is less than six per cent. of returns, and not more than three per cent upon any of them and as to some of them a deficit, taking the property as above stated within the State of Missouri at its fair valuation. And this is so without reference to bonds, because in no case do the bonds bear six per cent interest. But taking the bonds into consideration, there is still not to exceed three per cent returns, and many cases a deficit after considering all debits and credits, upon the true valuation for the state business. There is no evidence that any of the existing bonds were improperly issued either as to amounts or rates of interest. In fixing the value the Court has considered the evidence of witnesses as to the stocks and bonds outstanding, and the Court has considered the evidence of the fact that the Missouri State Board for taxing purposes has valued these properties. Of course those findings are not binding nor conclusive, but they are persuasive. But independently of stocks and bonds, and independently of what the State Board has valued these properties for taxing purposes, the evidence shows the valuations to be as recited in the findings of fact herewith filed, and to which reference will be made in the decrees.

It is absolutely necessary that many trains both passenger and freight do both a local and interstate business. Even the fast trains stopping at but few stations in the state carry state passengers
366 between such stations. And the same is true as to freight trains carrying freight both in carload and less than carload lots.

The valuation of the roads has been fixed by the Court as shown by the findings of fact. The entire state and interstate earnings of each of the roads within the state is known and fixed to a certainty. The expenses are known and fixed. To apportion these expenses, must be done according to one of the two theories, and the correct theory is that according to revenue. One theory or other must be applied to both freight and passenger expenses, and the Court should not adopt the one theory as to part, and the other theory as to another. The one theory is helpful to the one side, and the other theory helpful to the other side, the one theory to the one side in freight, and the other theory to the other side in passenger. But an arbitrary splitting of theories is illogical and unfair and cannot be recognized. The court has adopted the revenue theory because a great number of the best railroad experts of the country, against a very limited number to the contrary, have so testified. Every court that has ever had this question before it in so far as I am advised by the briefs of counsel and my own independent investigation has so held in the cases hereinbefore cited of the Supreme Court of the United States; in the two cases, by two Circuit Judges of this Circuit; by three District Judges of this Circuit, and by the Supreme Court of

Florida, State v. Atlantic Coast Line, (37 So. Rep. 657). And Beale & Wyman on Railroad Rates Regulation, Sec. 466, announces such as being the correct rule. The values of the property within the state have been fixed by the Court. The entire earnings within the state, interstate and state, freight, passenger and miscellaneous of each, have been fixed. The entire expense is known, including the extra cost of each. To ascertain whether the result is a profit, and if so what per cent, or a loss, is but a problem of primary arithmetic, as is shown by Judge Can Vevanter in Arkansas Rate Cases, (163 Fed. Rep., 141). There are other methods equally simple, the resultant figures of course being the same. These computations show as to the commodities covered by the freight rate statute of 1907 that two roads, the Hannibal & St. Louis, and the Burlington,
367 allowing nothing for extra cost, there is a deficit, and with all other companies less than two per cent. But with the extra cost added, the deficit for the two companies is much greater, and the other companies show a deficit.

The passenger earnings under the two cent fare law of 1907, allowing nothing for extra cost over interstate business, give no return whatever to the Rock Island, St. Louis & Hannibal, Kansas City, Clinton & Springfield, and the Great Western. The other companies will have the following: The St. Louis & San Francisco between three and four per cent; the Santa Fe between four and five per cent; The Kansas City Southern a small fraction over two per cent; the M. K. & T. between two and three per cent; the Burlington between three and four per cent. But all this is arrived at by allowing no extra cost of service. But to add the extra cost for freight and passenger, there are no earnings over expenses. This is confiscation under the Constitution.

It being a legislative act, and not a judicial one, this Court cannot fix rates. If it could, two and one-half cent passenger rates would be fixed for the stronger roads, and three for the others. But that is for the legislature acting itself with experts, such as the State employed in these cases, or through a Commission with like assistance.

In view of General Equity Rules prohibiting findings of fact, and other matters from being inserted in decrees, this opinion has been extended. And to further show how the court has considered the cases, and the various questions of fact covered by the voluminous evidence, findings of fact have been made and signed which will accompany this opinion.

Long and laborious as the work for the Court has been, I am of the opinion that the cases have been expedited by hearing the oral testimony as provided by General Equity Rule 67. It gave the Court a much better insight into the intricacies of the cases, and with a much better knowledge of the cases than could be gained by hearing exceptions to a Master's report. And I am fully compensated by the
368 belief that I have worked out the correct conclusions and with the knowledge that if I am in error, either as to fact or law, that the cases can be speedily heard de novo by the Supreme Court of the United States. Because I feel in all cases, and in these cases

more than ever before, as Judge Sanborn said in Boatmens Bank v. Fritzlen, (135 Fed. Rep. 650, 655):

"Every conscientious judge, every thoughtful man, upon whom is laid the grave responsibility and the heavy burden of determining the rights of his fellows, rejoices in the thought, wherever such is the case, that his decision may be reviewed, and that, if erroneous, it will not work irreparable injustice to him whom he deems it his duty to defeat."

The decrees will be for the complaints. Each party will pay the costs by such party made, except the compensation of the Master and stenographer. The half of those will be paid by complainants, and the other half by respondents. The reservation clause usual in such cases will be in the decrees.

Kansas City, Missouri, March 8th, 1909.

369 Afterwards, to wit, on the 17th day of April, 1909, a Supplemental Opinion was filed. Said Opinion is in words and figures as follows:

In the Circuit Court of the United States, Western District of Missouri, Western Division.

No. 2988. Equity.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY, Complainant,
vs.
HERBERT S. HADLEY, et al., Respondents.

And Equity Cases Nos. 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004, 3006.

Supplemental Opinion.

SMITH MCPHERSON, *Judge.*

These cases are pending on a motion to modify the decrees and opinion filed March 8th, 1909.

1. The costs were taxed, the one-half to the railway companies, and the one-half to the state officers. The company being successful, it is contended that the taxable costs aggregating about eighteen thousand dollars should all be adjudged against the state officers.

In actions at law, in the absence of a tender or statutory offer to confess judgment, the costs follow the judgment. In equity cases such is the general rule, but not the invariable one. The award as to costs is discretionary.

Two things influenced the court in dividing the costs herein.

First. Defendants are officials, and as officials are representatives. They have no personal interest in the litigation. This of itself is not enough to avoid the costs, but it is to be considered. It will be presumed that the legislature will appropriate a sufficient amount to protect these officers. But this is not always done. The last legisla-

ture appropriated $40,000.00 for these cases, which was but two-thirds enough for the two years. The Master in Chancery and the lady stenographer gave a great deal of time, followed by very large, but justly owing bills, the one-half of which has been paid by the railways, and by the state nothing with the appropriation exhausted.
370 Whether the other half is paid all depends upon what the legisture does.

Second. The more sufficient reason for dividing the costs is because of the extravagantly enormous record made in the cases. The Master gave many weeks to taking evidence, and many more weeks were given by the court in taking evidence. Both the Master and the Court were powerless to abbreviate the record, because the Supreme Court in the case of Blease vs. Garlington, 92 U. S. 1, and the Circuit Court of Appeals for this Circuit in case of Schubert vs. Woodward, 167 Fed. Rep. 52, have held that Trial Courts must receive in equity cases, all evidence offered that is germane to the issues. I complained, and in effect gave warning many times to the parties, but without avail, because of the prolixity of the record. Something like 15,000 pages of evidence were taken, when one-third would have been as strong a presentation of either side. Courts should impose penalties for this, and the only penalty is by way of costs. Both sides were at fault, and both sides should bear the burden. It does not follow that such a precedent will be one to plague. It is not a precedent to be followed except in cases where it ought to be followed.

2. Complaint is made because of the recital in my opinion that, "It being a legislative act, and not a judicial one, this court cannot fix rates. If it could, two and one-half cent passenger rates would be fixed for the stronger roads, and three for the others. But that is for the legislature acting itself with experts, such as the state employed in these cases, or through a commission with like assistance.

My statement that "It being a legislative act, and not a judicial one, this court cannot fix rates," is not controverted by anyone. This being so, as of course, what I said as above is obiter dictum. But because it is dictum, is no reason whatever for not saying it, and still less a reason for now eliminating it from my opinion. The greater part of one of the greatest opinions ever written by the great Chief Justice (Marbury vs. Madison), was dictum. But even if it were possible, who would dare to mutilate that opinion? But two
371 years since there were published two very large volumes wholly covering dictum only of the United States Supreme Court. Those dicta were and are binding on no one, but they contain much of the cream of our jurisprudence. This dictum of mine is binding on no one. It is my opinion, and will stand as of value, or of no value as the profession and informed laymen fix the value thereon. I believes it proper to say that the strong roads should have two and one-half cents per passenger per mile, and the weaker roads three cents. I could have fairly stated that the St. Louis and Hannibal, and the Kansas City, Clinton & Springfield Railroads should have four cents or more per passenger mile.

I still adhere to these views, and entertaining them, I know of no reason for not stating them, with reasons for believing it was my duty

to state them. Passengers, like consumers, have rights. One of those rights is to have fares fixed reasonably low. But the term reasonable is a comparative one. It must be in proportion to what it is worth, and the better the service, the more it is worth. And the public is entitled to have, with the right to demand, efficient service, provided always such is paid for. Much in argument was said by counsel on both sides as if an arbitrary flat rate is all that is involved, regardless of service and regardless of all other things. Whether the trains are expensive or inexpensive, daylight or night trains, through or local trains, main line or branch trains, roads through the hills of central Missouri, or the Ozarks or over the prairies, and whether the trains carry few or many passengers, are matters largely passed over as if of no importance. To me they seem of great importance. So it is to the greatly increased cost of materials compared with ten years ago. The average fare paid per year, aside from the low excursion rates, is less than six dollars per year, commercial travelers excepted. To reduce that to four dollars, thereby saving two dollars, is of course of importance. So are other matters of importance. Aside from having efficient service to be paid for at remunerative rates, the laboring men, the employés, have rights. They have the right to be well paid for their work, in day time and night time, sunshine and storm, during the excessive heat of the summer and the rigors of winter. Their hazardous and most dangerous service entitles them to remunerative compensation, which they cannot have with meagre earnings of the roads. Evidences of humanity and kindly feeling for their fellow men need not be wholly displayed toward the man who pay- six dollars per year for passenger fares. A kindlier disposition would suggest an equitable division of sympathy. Thousands and thousands of them have already been "let out" because of decreased earnings, and more are to follow, with diminished compensation for those from necessity retained. What is the truthful answer to make these men, and who is to make this answer? It is doubtful if the legislature thought this out. I decline to modify my opinion as respects this.

372

3. It is contended that the court was in error in its original opinion in that the penalties of the statutes render them void.

Whether rates prescribed by statutes are valid or invalid, is a judicial question, and the legislature cannot prohibit the courts from passing thereon. This was so stated in the Minnesota Milk case, 134 U. S. And this cannot be done indirectly, by imposing such penalties as to terrorize the company, its officers and agents so that they do not dare to litigate the question. This was so held in ex parte Young but a year ago.

This question received but little attention from any of the counsel or the court, and was but briefly discussed by the court in the opinion.

In the Consolidated Gas case in 146 Fed. Rep., 150, Circuit Judge Lacombe held that a penalty of $1,000.00 for each charge for gas in excess of the statutory or commission rate was prohibitive and a denial of the right to go into the courts. And on the final hearing of the same case in 157 Fed. Rep., 849, 881, a like holding is made. And in the same case on appeal, the Supreme Court held a year ago that the penalties were so excessive as to be void.

The discussion by Justice Brewer speaking for the court, in the case of Cotting vs. Kansas City Stock Yards, 183 U. S., 79, 99, is to the same effect, although the question was not decided. And a like discussion, with a like putting the question aside without a decision, is found in the Reagon case in 154 U. S.

373 And in the ex parte Young case, although the penalties were more severe than under the Missouri statutes, the question is at rest. The sole question is—Can a party be allowed to litigate a disputed question of fact as to property rights, without confiscation of all its property, and all of its agents being sent to jail, if the case is lost? Surely he can. Upon reflection and with much additional consideration, the holding now is that the section imposing penalties is void.

But this is largely an academic question, for the reason that the penalty section is easily separated from the main features of the statute. And I need not discuss the proposition that when separable, the void section does not render the entire statute void.

4. These cases as to freight were brought four years ago. Two years ago supplemental bills were filed, bringing forward the new freight rate statute, and the passenger rate statute. Upon a hearing by agreement of counsel on both sides, a temporary injunction was issued against the enforcement of the freight rate statute. The railways asked for a temporary injunction against the enforcement of the passenger rate statute. The Attorney General and his associates contested this, and were successful to the extent that the court ordered an observance of the statute for some months, until information from actual tests could be made. So that from the very inception of the case, it has been contended on the one side that the statute is invalid, and on the other side that the statute is valid. It therefore follows that this court has had jurisdiction for four years over all the parties, and over the entire subject matter of state earnings.

It is clear that this court having such jurisdiction should retain it over all the parties, and the subject matter, to the end that the decrees hereafter may be enlarged, or modified, as varying circumstances and the acts of the parties may require. Therefore the decrees should be so changed as to recite such reservations.

Kansas City, Missouri, April 17th, 1909.

374 UNITED STATES OF AMERICA, *set:*

I, Adelaide Utter, Clerk of the Circuit Court of the United States for the Western Division of the Western District of Missouri, do hereby certify that the above and foregoing is a full, true and complete copy of the record, assignments of errors and all proceedings in the cause wherein The St. Joseph and Grand Island Railway Company is complainant, and John A. Knott, et al., are defendants, on the appeal of the defendants, and the cross-appeal of the complainant, as required by the stipulation of parties on file in said cause, set out on pages 311 and 312 *supra*.

Witness my hand as clerk and the seal of said court. Done at Office in Kansas City, Missouri, this first day of May, A. D. 1911.

[Seal of United States Circuit Court for the Western District of Missouri, Western Division.]

ADELAIDE UTTER, *Clerk*.

Endorsed on cover: File No. 22772. W. Missouri C. C. U. S. Term No. 696. John A. Knott, H. R. Oglesby, and Frank A. Wightman, Railroad and Warehouse Commissioners, and Elliott W. Major, Attorney General of the State of Missouri, appellants, vs. The St. Joseph & Grand Island Railway Company. File No. 22773. Term No. 697. The St. Joseph & Grand Island Railway Company, appellant, vs. John A. Knott, H. R. Oglesby, and Frank A. Wightman, Railroad and Warehouse Commissioners, and Elliott W. Major, Attorney General of the State of Missouri. Filed June 26, 1911. File Nos. 22772 & 22773.